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PRACTICAL POLITICS.

No. III.

FREEDOM OF LAND.

BY

G. SHAW LEFEVRE, M.P.

London:
MACMILLAN AND CO.
1880.

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(ISSUED BY THE NATIONAL LIBERAL FEDERATION.)

III.

FREEDOM OF LAND.

NOTE.

THE object of this Series, prepared for the National Liberal Federation, is to afford information on subjects of political importance, with the design of stimulating inquiry and aiding in the formation of sound and instructed public opinion.

In inviting Contributions, and in arranging for the publication of the Series, the National Federation does not stand committed to the views expressed by the respective writers; nor is any one of the contributors responsible for anything beyond the statements and arguments contained in his own essay.

86, NEW STREET, BIRMINGHAM,
January, 1880.

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PREFACE.

THE following exposition of the necessity for Reform of the Land Laws of this Country was written in the autumn of 1877, on the suggestion of Mr. Chamberlain that a popular treatise on this subject would be useful with a view to the next General Election. It was not then published, on account of the exclusive public interest then and since excited by Foreign and Indian questions. A spirited foreign policy, and a policy of aggrandizement and war, divert, as they are intended by their authors to divert, public attention from necessary reforms at home. The prolonged Agricultural Depression, however, has overcome this counter attraction, and has forced attention to questions affecting the Land. The necessity for change in our Land Laws is no way due to this depression. It was as urgent when the seasons were good, and the prices of produce

were high. Adversity however, has brought into prominence defects in the system, and has already caused a demand for change from not a few encumbered Landowners. It has also directed public attention to the subject with an earnestness which must compel legislation of a wide character at an early date.

The following pages were wholly written before the publication of Mr. Kay's valuable letters to the *Manchester Guardian*, since collected in a volume entitled *Free Trade in Land*. Some few paragraphs which deal with the law of Entail, and with the number of Landowners in England in early times, have appeared in a paper which I read before the Social Science Association in 1877 on the subject of Entails, and in an article on English Landowners in the *Fortnightly Review* of the same year.

G. S. L.

January, 1880.

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FREEDOM OF LAND.

THE NEW DOMESDAY BOOK.

THE modern Domesday Book, as the Parliamentary Return, giving the list and acreage of the Landowners of the United Kingdom, has been happily termed, enabled the country for the first time since the Domesday of the Conqueror, to form an estimate of the ownership and distribution of its landed property. The New Domesday Book.

Compared indeed with the original, it is very deficient in details. It is so framed as to give very little local information as to the ownership of land in particular parishes or districts, or the number of tenants of the various owners, or as to the nature of the ownerships. It does not distinguish between leaseholders, copyholders, and owners in fee; it omits all reference to the owners of land let on long lease; it does not distinguish what is mere house property from landed property; it does not

The New Domesday Book.

enable us to estimate how many members still exist of the class formerly so numerous, the yeomen of England, cultivating their own lands, or how many can be considered as forming a class of peasant proprietors; it is admittedly inaccurate in many of its details.

These inaccuracies, however, do not, it is believed, disturb the general results; and faulty though it may be in many respects, it is still most valuable; it enables us to compare the numbers of landowners of different classes in the three kingdoms with the number of owners in other countries. At first sight indeed the aggregate is apt to mislead. It appears to indicate a much larger number of proprietors than was supposed to exist. A gross total of 1,153,816 landowners is given for the United Kingdom: of these, however, no less than 852,438 are entered as owners or lessees of less than one acre of land, with an aggregate of 188,000 acres only, valued at 36,300,000*l.* per annum. It is obvious that with rare exceptions these must be owners, and most of them leaseholders, of mere house properties. From the 301,378 entries of owners of above one acre, further reductions must be made in respect of duplicate entries, holders of glebes, corporations, and charities. A careful examination of the Return has shown that, after making these deductions, there are

certainly not more than 166,000 owners of land, as distinguished from houses, in England and Wales; 21,000 in Ireland;[1] and 8,000 in Scotland. The New Domesday Book.

It may be safely stated then that the number of landowners of the United Kingdom is under 200,000. How then is the land divided among these owners?

A careful analysis has shown that 955 persons own between them 29,743,000 acres out of the 72,000,000 acres accounted for, exclusive of manors, woods, forests, property let on long lease, property within the metropolis, and house property generally; giving an average to each of nearly 30,000 acres, consisting of estates situate generally in two or more counties. A further analysis has shown that about 4,000 persons, in the next rank of landowners own between them about 20,000,000 acres, with an average of 5,000 acres each; that 10,000 persons own between 500 and 2000 acres, with an aggregate of 10,000,000 acres; that 50,000 persons own between 50 and 500 acres with an aggregate of 9,000,000 acres; and that 130,000 own between one acre and fifty acres with an aggregate of 1,750,000 acres. These figures however rather

[1] Including about 5,000 holdings bought by their tenants under the Bright clauses of the Church Disestablishment Act (1869) and the Irish Land Act (1870).

The New Domesday Book.

understate than overstate the proportion of land held by large owners as compared with small owners. An addition should be made to the acreage of the former, in respect of woods and manors which are not accounted for in the return, and which probably amount to nearly 4,000,000 acres. Making an addition on this account, it may be safely said that 15,000 persons own between them 64,000,000 acres out of a total 76½ millions; of the remainder about 1,500,000 acres are held in mortmain, by the Crown, the Ecclesiastical Commissioners and other Church Corporations, the Universities, Public Schools, Hospitals and Charities.

It will be seen, however, from the above figures, that the distribution of land is very different in the three countries. In Scotland more than half the country consists of mountain and moor, of little agricultural value, and held in immense blocks. The remaining half is owned by a very small number of persons; peasant proprietors do not exist there. One person only out of every 400 owns land; and one in twenty-eight owns a house.

In Ireland the proportion of landowners would have been about the same as in Scotland, but for recent legislation promoting the purchase of land by tenants, which has added about 5,000 to the number of small owners, or nearly 30 per cent. of the previous number; with this addition, one

person in 257 owns land, and one in 120 owns a house. The New Domesday Book.

In England and Wales the number of owners of land is proportionally larger than in the other countries. There are parts of the country, such as Cumberland and Westmoreland, where the class of yeomen has not altogether died out. There are considerable numbers of owners of small properties in the neighbourhood of towns, which would be more properly classed as owners of villas. In Lincolnshire and Cambridgeshire there are a certain number of owners of small holdings. With these exceptions there cannot be said to exist a class of yeomen farmers or of peasant proprietors. One person out of 130 is probably an owner of land, and, omitting London, one person in twenty-six is probably the owner of a house.

LANDOWNERS IN OTHER STATES.

If we compare the state of landowning, as thus disclosed, with that existing in others of the civilized countries of the world, whether in Europe or in the New World, we cannot fail to be struck by the extraordinary difference. Nowhere is there anything at all comparable to the state of this country, except in parts of Spain, in Bohemia, and in Southern Italy and Sicily. Throughout the Land-owners in other States.

Land-owners in other States.

whole of Western, Central, and Northern Europe the greater part of the soil is everywhere owned by a large body of persons, including large numbers of what we should call the yeomen class, or small farming proprietors, and still more of the class of smaller owners, more properly called peasant proprietors.

France is said to be owned in respect of two-thirds of its total cultivated area by small farmers and peasant proprietors, and one-third of it only is owned by larger proprietors, who let their land on farming leases to tenants. M. de Laverne, the highest authority on this subject, stated a few years ago, before the separation of Alsace and Lorraine, that the owners and occupiers of land in France might be divided into three classes, as follows:—

FRANCE (OWNERSHIPS).

		Total Acres.
5,000,000	owners averaging 3 hectares (7½ acres)	37,000,000
500,000	medium sized owners averaging 30 hectares (75 acres)	37,000,000
50,000	large proprietors averaging 300 hectares (750 acres).	37,000,000
5,550,000		111,000,000
State domains and Communal property		10,600,000
		121,600,000

FRANCE (AGRICULTURAL HOLDINGS).

		Total Acres.	Land-owners in other States.
1,815,000	occupiers of less than 5 hectares (7½ acres) . . .	12,540,000	
1,256,000	occupiers of between 5 hectares and 40 hectares (100 acres)	43,800,000	
154,000	occupiers of over 40 hectares (100 acres)	27,142,000	
3,221,000		83,482,000	
Woods and forests		19,980,000	
Moors and uncultivated land . . .		18,200,000	
		121,662,000 [1]	

[1] It is of interest to compare this table with a similar one for the United Kingdom :—

OWNERS.

	Total Acres.
130,000 small owners averaging 13 acres	1,750,000
50,000 medium sized owners with an average of 180 acres . .	9,000,000
15,000 large owners averaging 4,260 acres	64,000,000
195,000	74,750,000
Crown lands and lands in mortmain . .	1,600,000
	76,350,000

AGRICULTURAL HOLDINGS.

	Total Acres.
750,000 occupiers of less than 10 acres	4,500,000
316,000 occupiers of from 10 acres to 100 acres	14,700,000
92,000 occupiers of above 100 acres .	28,000,000
1,148,000	47,400,000
Mountains, moors, and woods	29,000,000
	76,400,000

Land-owners in other States.

From these figures it appears that France is neither owned nor cultivated to the extent that is generally believed by peasant proprietors; one-third only of its area is owned, and one-tenth of it only is cultivated by this class. Another third part is owned by half a million of persons we should more properly class as yeomen, and one-third of it is cultivated in farms of about the same size. The remaining one-third is owned by what are called large proprietors, 50,000 in number, and one-third of the cultivated part of France is held in large farms, most of them on tenancy. One half the area of cultivated France is held on tenancy; and the farms of over 100 acres very much outnumber those in the United Kingdom. Compared with this, five-sixths of the area of the United Kingdom are owned by 15,000 persons, and not one fiftieth part of it by small owners. The number of small cultivators however is considerable; they number three-quarters of a million and hold one-tenth of the cultivated land; the large farms are under 100,000 in number, but they contain about two-thirds of the cultivated land of the United Kingdom.

Switzerland, Baden, the Rhine provinces of Prussia, Bavaria, and Hesse are almost wholly owned and farmed by their cultivators, varying only between the moderate-sized farmers and peasants. The same may be said of Sweden and Norway. Belgium, in respect of one-half of its

area, is cultivated by its owners, and in respect of the other half by a very numerous class of small tenants farming the lands of others. Throughout the remaining parts of Germany, whether Austria or Prussia, the land is owned by large proprietors and small proprietors in about equal proportions: large properties are not unfrequent, but among them are dispersed an immense number of small owners, for the most part cultivating their land themselves. The same may be said of Piedmont, North Italy, and of the northern parts of Portugal and Spain. Land-owners in other States.

In none of these countries does there exist the entire and absolute separation between the three classes of landowners, farmers, and day labourers, which is the distinguishing feature of the English system; in many of them there are numerous large properties cultivated by tenants and labourers; but the tenant-farmers are members of a class of whom many are themselves owners; and a great proportion of the labourers are also owners of land. Throughout all the countries named at least 50 per cent., and in France probably 75 per cent. of the labouring population in the rural districts are owners of small properties, which they either cultivate themselves, or let out to their neighbours or relations to cultivate, while working for wages themselves.

In the United States also the separation of the rural community into landowners, farmers, and labourers has not begun to show itself.

The land is everywhere owned by its cultivators.

Land-owners in other States.

There are more than three millions of landowners cultivating their own lands. Even in the oldest settled States, in the neighbourhood of large cities, where wealth has accumulated to an extent quite as great as the great manufacturing towns of this country can show, and where land has attained a very high value, the same features exist. Ownership everywhere prevails as opposed to tenancy. The State of New York may be compared in extent with Ireland. It contains 22,190,000 acres of land held in farms. Of these there were, by the last census, in 1870, 216,000 owners as compared with the 21,000 owners of land in Ireland. These owners have increased since 1860 by 20,000, or 10 per cent.; and this increase has been mainly in the class of persons owning between three acres and twenty acres. Of these there were 17,800 in 1860, and 31,000 in 1870.

CAUSES OF DIFFERENCE.

Causes of Difference.

What then is the cause of this extraordinary difference? Why is it that land in England is in the possession of so few, and in every other part of the world of so many? Is it the result of economic laws only, working freely, without any artificial aid or encouragement by the State, or is it the result of legislation, and of political or social causes? Has it resulted in the full development of the resources of the land? Has

it tended to the well-being of all classes, and stimulated the industry and promoted the thrift of the lowest, as well as subserved the enjoyment of the highest ? Causes of Difference.

Where a very marked difference is observed in the conditions of one and more countries, the political inquirer instinctively looks about for other differences, and on finding them concurrent in all cases, connects them together as cause and effect. In the case therefore of landownership, it is not strange that we should at once have our attention called to the fact, that this country differs not only in its condition but in its laws; while in every other country above referred to, the laws either give no sanction to the accumulation of landed property upon eldest sons, or, as in the case of France and some others, compel its distribution equally among all the children on the death of their parent, and generally offer no facilities for the maintenance of property in particular families by means of entails, in this country the law gives prominent sanction to the one practice and facilities for the other.

There are, however, economists, and by no means an unimportant class, who believe that the present distribution of land in England has no reference whatever to these laws, and that it is due solely to economic causes, which they conceive tend in a wealthy country to the inevitable aggregation of land in a few hands, and to a complete separa-

Causes of Difference.

tion of the functions of landowners, farmers, and labourers. In the view of such persons, the existing condition is defensible on the ground that it leads to the best development of the resources of the land, and is inevitable, as with the growth of wealth and luxury, land itself must become a luxury of the highest quality, the ownership of which can be indulged in only by the rich.

According to this school the existing tendency will be carried much further, and we may look forward, as wealth increases in this country, to the gradual but certain extinction of those few small ownerships of land which still exist in rural districts, and to the absorption of all small estates in larger properties; and they preach the doctrine that the further this monopoly of land, as they frankly admit it to be, is carried, the better will it be for the country, as the better prospect there will be of the duties of landlords being carried out. Land is, and should be, in this view, an article of luxury which only the rich can afford to hold; and it is only to be expected, and is certainly to be desired, that the smaller proprietors should convert their capital as landowners into tenants' capital, by selling their land and becoming the tenants of five times as much land as they could hold as owners.

It may be replied to this, that in other parts of Europe, where there is great accumulation of wealth, there is no such tendency. Belgium is

one of the wealthiest parts of Europe. It compares with the manufacturing districts of England. In proportion to its size and population, there is certainly as much of capital invested in manufactories and railways; and yet so far from the tendency being to a reduced number of owners, the reverse is the case, and the movement of property is towards a gradually increasing number of landowners. Small capitalists outbid the larger capitalists for landed property; and not only is a great part of Belgium cultivated by its owners, but of the remaining half a large portion is owned in very small portions, and is let out to farming tenants at very high rents. Land is there the luxury of all classes, although there are many very large proprietors. Causes of Difference.

The same may be said of Normandy, the wealthiest, happiest, and most populous part of France. It is a rich manufacturing district. There would be the same motive there, as is alleged to exist in England, for small proprietors to sell their lands, become tenants of what they previously owned, and to invest their money either in industrial enterprises returning a much higher rate of interest, or in tenants' capital, enabling them to hire more land than they could own. Yet such is not the fact. Small proprietors give higher prices than large proprietors, prices that would appear to be excessive in the agricultural parts of England, yet there is no tendency for land

Causes of Difference.

to fall into few hands. There is great variety of ownership in that part of France; large owners and small owners intermix; large farms and small farms are found side by side; but the large owners are not prone like pike in a pond to swallow up the smaller fry of their kind.

The price of land in rural districts of France is generally forty years' purchase of the annual value, and often more. The peasants are not without appreciation of other investments giving higher returns; it is well known that the great loans raised of late years to meet the war expenses and the German indemnity, have been mainly raised from the savings of the peasants; they are not the less ready however to purchase land returning one-half less interest. M. de Laverne has shown that the common statement about the indebtedness of the small proprietors in France is not true; the mortgages on their properties average no more than ten per cent. of the value of the land.

The same may be said of Holland, a country where there is more accumulation of savings than in any other part of Europe; whose inhabitants are accustomed to lend out money to every borrowing power in Europe, and often in loans of the most risky nature. They appear none the less able to understand the value of safe investments in land at a very low return. Land is even more valued by the small capitalist than by the wealthy.

So again in the United States. In many of its

States the general condition of society is much the same as in England. Land in some of the older States has attained a value approaching closely to its agricultural value in England and Ireland, but there is not the smallest tendency to its passing from the hands of the occupiers to a class of proprietary landlords. The land is universally owned by its occupiers. Causes of Difference.

So far then from being able to draw any conclusions from other countries in favour of the proposition that with advancing civilisation and with increasing wealth and luxury, land tends to fall into fewer hands and to become more exclusively the luxury of a particular class, the very reverse is the case; and everywhere we find other classes competing for land with the wealthy, and giving for it prices, which would be considered very high even in this country.

We are not, however, left to the resource only of comparing existing things and tendencies in other countries with what we experience in this country; we are also able to point to the changes which have been made in those countries, with the very object of bringing about their present state, and of avoiding the condition which this country presents.

It is important to recollect that the condition which exists in England was that exhibited not many years ago throughout the greater part of Europe, that the laws such as we now have in

Causes of difference. England were the laws of the whole of Europe, and that Europe has within the last hundred years almost universally abandoned them; and further, that our colonists took these laws with them to the New World, but there speedily got rid of them, finding them opposed to the principles on which their communities were founded, and intolerable in their results upon the free commerce of land.

LAND LAWS OF FRANCE.

Land Laws of France. In France, before the Revolution of 1789, large properties prevailed throughout a great part of the country. They were held and preserved in families by laws very similar to those which still prevail in England. Primogeniture and entail were almost universally in practice among the upper classes. These laws, however, were the exclusive privilege of the nobility. The law was different for inferior classes. There existed even in those days a large number of small owners. This class had existed from time immemorial, and were either descendants of small freeholders, or of Roman coloni, holding on payment of small and hereditary rents, and who had been brought within the range of the feudal system, or were emancipated serfs who held by certain tenure, but subject to most arbitrary and galling services and dues, under feudal lords. These people had inherited from the Roman law the principle of equal and com-

pulsory division of property on death. The principles of feudal law had never been extended to them. Primogeniture was not their privilege; entail was expressly prohibited to them. Land Laws of France.

Even before the Revolution great complaints were made of the effect of entails, in causing multiplicity of suits, in creating uncertainty as to title, in depriving creditors of their just rights, in promoting clandestine arrangements of property, in withdrawing from the freedom of commerce so large a portion of the land, and in tending to the accumulation of property in few hands; many attempts were made by the executive government to restrict and curtail this process, and to make it as little noxious as possible.

The celebrated chancellor, D'Aguesseau, wrote of entails, in the year 1750, in language which might be used of England in the present day. The president of Aix, another distinguished lawyer, had written to him as follows:—

"One may doubt whether it would not be advantageous to the interest of the State wholly to abolish entails (substitutions); they help to preserve family property, but it is only by sacrificing the creditors of the family, who have lent their money in good faith. Nothing is more unjust than this; and as it is a matter of indifference to the State that the property of such families should be preserved, it seems that no general reason exists for permitting the maintenance of entails, which

Land Laws of France.

were invented by people possessed of a foolish obstinacy to prolong their names, but who forget that a bankruptcy, occurring in every second generation, dishonours them."

D'Aguesseau, in reply, wrote as follows:—

"The complete abolition of entails would probably, as you say, be the best of all laws; and there might be found more simple means of preserving a sufficiency of property in great families to sustain their position. But I fear that in order to arrive at this, we should have to commence by reforming men's brains, and this would be the enterprise of one whose own head might be in danger of being reformed away. It is in truth a great misfortune that the vanity of mankind is the predominating influence of legislation."[1]

It was by the inspiration of D'Aguesseau that a law was passed in 1747 greatly limiting the power of entail, and compelling publicity of them. In the preamble of this law, it is stated that among other evils of entails, they provided an order of succession different from that of the State; that what had been intended for the benefit of the family often ended in its ruin; and that entails interfered with the freedom of commerce in land. The statute, however, effected little; it left untouched all the existing entails, which still continued to spread their noxious influence throughout France.

[1] See letters of D'Aguesseau, quoted in treatise on Substitutions by Cossé.

Land Laws of France.

One of the earliest efforts of the Revolution of 1789 was to deal with the land question. In the celebrated meeting of the National Assembly of the 4th of August, it was at the instance of Vicomte de Noailles and the Duc d'Aiguillon, the foremost and wealthiest members of the nobility, that all feudal rights and privileges were abolished, and among these were the privilege of primogeniture and the power of making entails. Of the spirit which animated the Assembly on these subjects we can best judge from the well-known speech of Mirabeau on the law of succession. "Is it not sufficient," he said, "for society, that it has to bear the caprices and passions of the living? must it also suffer from those of the dead? Is it not enough that society should be charged with all the evil consequences resulting from testamentary despotism from time immemorial to the present? must we also subject it to all that future testators may add to this evil by their last wishes, so often whimsical and unnatural? Have we not seen a multitude of wills which breathed of pride or vengeance; in some an unjust, in others a blind preference? The law cancels those wills which are termed *ab irato*, but does not and cannot quash those which we may call *à decepto, à moroso, ab imbecilli, à delirante, à superbo?* How many are there of these acts of the dead towards the living, where folly seems to dispute with passion, and where the testator makes a disposition of his

Land Laws of France.

property which he dared not confide to any one when alive; a disposition in respect of which he must have detached himself from all regard to his memory, and have thought that the tomb would protect him against ridicule and reproach? . . . . There are no longer eldest sons or privileges in the great family of the nation; there should be none in the smaller families of which each State is composed. How many are there who, born without fortune, succeed by some means or other in enriching themselves. Puffed up by this accident, they often conceive a respect for their name, and they will not let it pass to their descendants, except under escort of a fortune which may recommend it to consideration; they choose an heir among their children; they decorate him by will with all that can sustain the new existence which they prepare for him, and their ambitious pride paints for itself by anticipation, even beyond the tomb, a line of descendants who will do honour to their blood. Let us then stifle this germ of useless distinctions, let us break these instruments of injustice and folly!"

Under the influence of this passionate oration, the Assembly not only voted the repeal of the laws of primogeniture and entail, but would not even permit primogeniture; it made universal and applied to the nobility that which had been previously the law of the lower classes, namely, the compulsory division of the greater part of the

paternal property, of whatever nature, equally among the children, leaving only a small proportion to the discretion of the testator. Land Laws of France.

In 1792 the Assembly carried the same principles further; it abolished all existing entails; the expectant heirs under entails were all irrevocably deprived of their expectations; and property subject to these settlements was, in the interest of the public, freed from all limitations and placed at the absolute disposal of existing holders.

It is worthy of notice, that so speedily did these great changes commend themselves to the habits, customs, and opinions of all classes, even of the upper classes and of the nobility, and so rapidly did the principle of equal division of property on death gain acceptance, that when after the restoration of the Bourbon monarchy, the reactionary government of 1826 endeavoured to restore, to a very limited degree, the principle of primogeniture and the power of entail, so great was the force of public opinion against the project, so strong was the family feeling even of what remained of the old nobility opposed to a restoration of such privileges, that the Chamber of Peers rejected the proposals; the leading members of the old nobility voted against them, and hundreds of eldest sons petitioned against them on the ground that they would introduce disagreement and discord into their families. This shows how strongly the principle of equal distribution of property had commended

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itself, even to the families of the old nobility; and it is not too much to say that there is no institution in France so popular and so immutable, as that which requires equal division of property among children. The law permits a father to dispose of a certain portion of his property, and to accumulate this upon any favoured child, but the universal custom of France is to disregard this power, and to distribute equally among the children.

The French Revolution did more than merely alter the law. It took further measures to promote the wider distribution and ownership of property. The vast possessions belonging to the Church were appropriated by the State, and sold; 600,000 tenants became purchasers of their holdings, paying for them probably in depreciated "assignats." A portion of the property of the Emigrés, though less than is generally supposed, was dealt with in the same way. A portion of the communal property was also sold. Not less than a million tenants were thus enabled to become owners. Long after the Revolution, speculators, known under the name of *bandes noires*, bought up large properties and sold them to the tenants. The result of all these operations was vastly to increase the number of landowners, and to produce the state of ownership which we now see there. Has the condition of the peasants improved? Who can doubt it who reads the description given of them before the Revolution and compares it with their present

condition ? Has France gained or lost in a political, social, or economic view, by this great accession to the number of her landowners ? There is only one answer possible for those who look back at her history of the last few years. It is universally admitted that she has been able to emerge from her difficulties of foreign invasion, of a crushing war indemnity, of the gravest political convulsion, and of struggles with the Commune of Paris, only by the conservative force of her great mass of property owners, and the vast accumulations of wealth created by their industry and thrift. Land Laws of France.

The principles of the Revolution, especially as regards the land laws, were carried by the triumphant arms of the new Republic, and yet more by the spirit which had created this force to many other countries, to Belgium and Holland, to the Palatinate, to Baden, to Switzerland, and to a great part of Italy. Everywhere the old laws of primogeniture and entail were abolished, and the principles of the French Code were adopted.

LAND LAWS OF GERMANY.

Even Prussia, and others of the German states, felt something of this impulse. The first sign they showed was by secularising, as it was gently called, the vast possessions of the Church ; and later, when Prussia was at its lowest ebb, the legislation of Stein and Hardenburg did much to renovate Land Laws of Germany.

Land Laws Germany.

her and reanimate her people, by modernizing her land laws, favouring the creation of absolute owners, and substituting full ownership for feudal dependency.

It may be worth while to dwell shortly upon the changes which occurred in Prussia,[1] as they were the model on which many other states have subsequently acted. Indeed it may be said that two methods have been followed by Europe, in getting rid of the feudal land system—the French method of the Revolution, where little regard was paid to private interests, where feudal services and dues were abolished without compensation, and feudal tenures were converted into absolute ownerships; and the Prussian method, or the legal method, by which the values of feudal rights were commuted, or a partition was made of the land occupied by the tenants, a portion being awarded to their feudal superiors in compensation for the loss of rights.

In Germany, as in France, the feudal system had not extinguished altogether the anterior existing class of small proprietors. They were indeed brought within the feudal system, and were considered as serfs; but they continued in possession of their small holdings, and exercised the rights of property and of bequest in respect of them.

1 This account of the Reform of the Land Laws in Prussia is taken mainly from Mr. Harriss Gastrel's able report in the papers laid before Parliament in 1870.

The subjection of the peasant to their lords was so great that "the air makes us serfs" became a common expression. The oppression of the serfs was carried to the utmost, and they were not unfrequently sold to foreign governments as soldiers; but notwithstanding this, the class continued in possession of their small holdings of land. The power of the lord did not extend to the appropriation of the peasant's lands. The lord cultivated his own demesnes, either personally or by his bailiffs, with the aid of the services of his feudal dependents, and by the labour of the serfs due in respect of their separate holdings. Land Laws of Germany.

It appears, however, that there was from an early date a disposition on the part of the nobility and feudal lords to encroach upon the lands of their peasants, and gradually to convert the latter more completely into labourers without land of their own. We find, for instance, that in the fifteenth and sixteenth centuries the small country towns petitioned the King of Prussia to protect and maintain the yeomanry and peasantry, on commercial and political grounds; on the former, because the nobles traded with the large commercial towns, while the yeomanry traded with the small country towns; and on the latter, because it was good for the state that the yeomanry and peasantry should not disappear and leave nothing but nobles and labourers. The Hohenzollern princes took this view of the case, and directed their policy

Land Laws of Germany.

to the maintenance of the peasantry. They prohibited the nobles from annexing the peasants' lands; and later they even forbad the eviction of a peasant, except upon well-founded grounds, and upon the lord of the manor replacing him by another peasant. Frederick the Great, actuated probably by military motives, issued severe edicts on this subject, prohibiting the absorption of peasants' lands.

At the beginning of this century Prussia had retained the feudal system in some of its most objectionable features. Her subjects were divided into three classes—Nobles, Townsmen, and Peasants. Each class was carefully restricted by law from mingling with the others in any way. The lands of each class were compulsorily maintained in its possession. The nobles' lands were for the most part the subject of unlimited entails. Freedom of commerce in land did not exist. Though the peasants were sustained and protected in their holdings, they were subject to the most arbitrary, capricious, and galling services and dues to their lords.

The French Revolution and the humiliating defeat of the Prussian armies by the French, brought on a crisis in this political and social system. After the treaty of Tilsit, the Prussian statesmen set to work to remodel her system, to modernize her land laws, and to abolish the remains of the feudal system. This great work was mainly

accomplished by the legislation of Stein and Hardenburg. It was temporarily arrested in 1816 by the reaction which set in after the close of the French war, and was not finally accomplished till 1850, after the revolutionary rising of 1848. The effect of this legislation was to convert the feudally subjected peasant, with more or less imperfect rights of property in land, into a perfectly free peasant with absolute ownership, subject only to a temporary rent-charge for commutation of the feudal services; to convert the feudally restricted lord, with more or less perfect rights of property in his land, into a perfectly independent landowner; to relax the system of entails; to abolish all restrictions on the sale of land as between the different classes; and to establish the great principle of freedom of sale of land. The operation was assisted by the creation of Land Credit Banks, supported by loans from the State, and which in their turn lent money to the tenants, repayable by instalments spread over a term of years, for the redemption of their rents. Land Laws of Germany.

The result of this legislation is that the land in Prussia is now the absolute property of a large number of owners, and that each owner is quite independent of any other owner. The law recognizes no distinction between land and other property in respect of succession, and both are equally divided among the children on the death of the owner. Comparatively little land is now withdrawn from

Land Laws of Germany.

free exchange by entail. Entails are not absolutely prohibited by law; though the prohibition of them was promised by the Constitution. The law of obligatory heritage (as it is called), by which a proportion of every man's property must descend to his children (in Prussia one-third of the property must go to the children equally if there be two children, and one-half if there be more than two), tends to prevent the accumulation of very large landed properties, and the equal division of real as well as personal property on intestacy, runs counter to any existing custom of primogeniture. Title to land has been made clear and almost indefeasible. The law of mortgages has been simplified; foreclosure and public sale are facilitated. By all these measures, and above all by the prevalence of absolute ownership of numerous owners, the free exchange of land has been fully attained.

The present state of Prussia as regards her land ownership is this: exclusive of the Rhine provinces and Westphalia, it consists of 70,000,000 acres, of which about 50,000,000 acres are cultivated and 17,000,000 are forest. The land is owned by 1,300,000 proprietors, of whom about 16,000 are large proprietors with properties of over 400 acres; 350,000 are medium-sized proprietors and 925,000 are small proprietors. About half of the latter are wholly employed on their small holdings, and the remainder are occupied mainly as day labourers or

have other industries. The large proprietors, who own between them about 45 per cent. of the country, of which however a large part is forest, either farm themselves or through their bailiffs, and the relation of landlord and tenant is comparatively rare; there are not more than 30,000 farm tenants. Of the total area not more than $\frac{1}{15}$th is withdrawn from free exchange by reason of entails; new entails are very seldom created, and old entails are dying out.

In the Rhine provinces and Westphalia, owing to the fact that they were subjected to the French laws at the beginning of the century, the land is even more distributed; with an area of about 11,000,000 of acres, there are said to be 1,157,000 proprietors, giving an average of 10 acres to each.

Of the beneficent results of this legislation with respect to land in Prussia, extending over a period of nearly fifty years, and but recently completed, there cannot be a doubt. The universal testimony of the country is in its favour. It promotes ownership *versus* tenancy; it aims at free exchange; the discouragement of entail and the withdrawal of sanction to primogeniture prevent accumulation of land; and the concurrence of all economists and statesmen is in favour of the yeomanry class as the main support of the empire. There are nearly a million owners of land living wholly upon the results of their own labour; they are said to form the most valuable section of

Land Laws of Germany.

Prussia's population, although not the most wealthy. Many of them have raised themselves from the rank of day labourers. A well-known economist says of them :—"The inclination of the German to establish his family upon its own plot is a blessed trait of the greatest moral advantage. It has been sufficiently shown that the possibility of acquiring land fosters hope, encourages energy, and never allows useful activity to flag."

It has been thought well to dwell upon this Prussian legislation, because it formed the model which many other States have subsequently taken for their legislation with respect to land. Austria, Saxony, Hanover, Hungary, and Denmark, followed in the wake of Prussia; and the general principles under-lying the more recent changes in Russia and the abolition of serfdom in that great empire, have been to a great extent borrowed from the same source. Generally it may be said that the French Revolution gave the first impulse to these changes: a reaction occurred at the close of the war in 1814, which stopped further advance, and in some cases, caused a return to the old system; the revolution of 1848, as a rule, compelled a final change.

It is not too much, then, to say that for the last ninety years a large part of the Continent, and for the last thirty years nearly the whole of the Continent, has been moving in the direction of more absolute and more distributed ownership of land. Its legislators have not been content with merely

abolishing primogeniture and entail; they have more actively thrown the weight of their laws and their institutions in favour of individualism, and in favour of ownership as distinguished from tenancy. The sale of Church property and State domains has largely assisted in this process. In some countries, as in Sweden, old entails are permitted to wear themselves out, but new entails cannot be created. In Denmark the constitution of 1849 forbade the creation of new entails, and promised that entailed estates should be converted into free property. This last promise, however, has not yet been fulfilled. Land Laws of Germany.

In Portugal, it is reported to our Government, "that every opportunity is seized to necessitate the transfer of land. The extinction and dispersion of old estates ensuing from the laws now in force have been sought for rather than prevented; there is a direct movement towards democratic institutions, to which all measures of the legislature have for some years tended. Another blow dealt against the agglomeration of landed property is the abolition of *Prasos de Vita*, a sort of right of primogeniture which allowed property of a certain kind to be left as an undivided inheritance for three generations." Portugal.

Of Gallicia, it is said, the local tribunals greatly facilitate dispersion and division of land. The Austrian civil code of 1869 accords no preference to eldest sons; exception is made in favour of Gallicia.

Land Laws. *majorats*, or family entails, but these cannot be constituted without the consent of the legislature.

Sicily. Even in Sicily, one of the most backward parts of Europe, changes have been made in the same direction. Since 1812, when the feudal tenures which had their origin in the Norman Conquest, were abolished, the tendency of legislation has been to favour the alienation and division of landed property. In 1819 entails were put an end to, and the testamentary power of a father was limited to one-half of his property. In 1862 a law was proposed for the disposal of the Church lands, which amounted to one-sixth of the landed property in the island; by 1869 about 20,000 lots of 451,000 acres were disposed of, averaging 23 acres; yet we are told that, in spite of these legislative changes, the greater part of the soil of the island is still in possession of the few. It has not been found possible as yet to extirpate brigandage.

RESULTS OF CHANGES OF LAND LAWS.

Results of Changes of Land Laws. The methods and results of all these changes in Europe are described at length in the series of Reports from the representatives of this country at foreign courts, which were laid before Parliament in 1870. They are unanimous as to the benefits which have resulted from the changes they report. Everywhere the production of the soil has been increased. Industry and thrift have been

stimulated. Pauperism has been greatly reduced, in many districts almost extinguished. Content has taken the place of chronic discontent. The rights of property have been greatly strengthened and are now everywhere secure. Results of Changes of Land Laws.

In the case of France, it is interesting to compare the account given of its present condition by Mr. Sackville West, with the description given of it by the well-known writer, Arthur Young, immediately before the Revolution of 1789. The state of France as described by Arthur Young was most wretched; everywhere he found, on the one hand, proprietors owning immense tracts of country heavily encumbered with debt, and which they were unable or unwilling to improve, and on the other, a vast body of poverty-stricken tenants overburthened with unjust taxation. In parts of France, however, there were even in those days, a considerable number of small peasant owners, cultivating their own land; and Young, with his usual discrimination, pointed out the difference in the condition of these as compared with the mass of the small tenants. He said of them, "their unremitting industry is so conspicuous and meritorious that no commendation would be too great for it. It is sufficient to prove that property in land is of all others the most active instigator to severe and incessant labour." In another passage he said, "The property in land is of all others the most active instigator to severe and incessant labour; and this

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truth is of such force and extent that I know of no way so sure to carry tillage to the mountain top as by permitting the adjoining villagers to acquire it in property;" and he added the words which have become a proverb, "Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him a nine years' lease of a garden, and he will turn it into a desert. The magic of property turns sand into gold."

This opinion of Arthur Young, of the influence of ownership upon production and industry, is the more important, as, while admitting the merit of small properties, he feared they would result in indefinite sub-division of the land, and in the increase of population to an extent which the soil of France could not support. "The population flowing from this division, he said, would be the multiplication of wretchedness;" and "properties much divided would prove the greatest source of misery that could be conceived." In this opinion he was followed by many English economists. Of these the ablest exponent was the late Mr. McCulloch, who, writing in 1823, thirty years after the French Revolution, prophesied of France "that in half century it would certainly be the greatest pauper warren in Europe, and along with Ireland have the honour of furnishing hewers of wood and drawers of water for all other countries in the world."

So far from these prophecies proving true, the very reverse has been the case, and the extension

of ownership, the bringing within the reach of all classes the opportunity of becoming owners, the efforts made by the Government to facilitate the connexion between ownership and cultivation, and the enormous increase in the number of small ownerships of land consequent upon the measures of the Revolution, have not led to a great increase of the population and to a consequent multiplication of a pauper class. They have had the very opposite result. Production has been greatly stimulated by the sense and security of ownership; but the population has not increased relatively in the same proportion; the average condition of the people therefore is vastly improved; pauperism is almost unknown in rural districts; the habits of industry and thrift are universal. The complaint now made by many economists is the reverse of that which was predicted by Arthur Young and McCulloch; they contend that the system of small ownerships is to be condemned because it tends to check the increase of population.

Results of Changes of Land Laws.

It is true that the population of France increases so slowly that it may almost be said to be stationary. It is not by any means certain however that this can be attributed wholly to the prevalence of peasant proprietors. In Belgium and Switzerland, countries differing widely in their commercial conditions, but agreeing in this that they have a very large number of peasant owners, the population is by no means stationary, and the

Results of Changes of Land Laws.

births exceed the deaths in a proportion not far different from that of England. Let us, however, assume for the purposes of argument that the prevalence of peasant proprietors, and the wide distribution of property in land, act as a restraint upon individuals in such a manner as to reduce greatly the rate of increase of population; is it a great disadvantage and a matter to be deplored? France is not a nation which has a genius for emigration; her sons love her soil too much, and care not to face the unknown in other climes. Without emigration, and with the rate of progress of population that prevails in England, France would not long supply a sufficiency for her population. The increase of the *prolétariat* without corresponding increase of subsistence, would not be considered a matter for satisfaction. The prophecies of Arthur Young and M'Culloch, that her system of small cultivators would lead to her becoming the pauper warren of Europe, and her sons the hewers of wood and drawers of water for the rest of Europe, have not been fulfilled; but they make us feel what might have been the destinies of France under a different system. Both objections to her system of widely distributed property—namely, that it may lead to her becoming a pauper warren, or that it may tend to a very slow rate of increase of population—cannot be sound; which of them would be the most serious?

If the institutions of France have resulted in

self-acting process of adapting the growth of her population to the means of subsistence, it would seem to be not the least merit of a system which is based upon the wide distribution of property, bringing home to the lowest, as well as to the highest, the motives of restraint. Results of Changes of Land Laws.

Of the general condition of the small owners in France and of the influence which the sense of property has on agriculture, there can be no better account than that of Mr. Sackville West, who in 1870 was Secretary of the British Embassy at Paris, and who thus reported to the Foreign Office.

"The small proprietor is seen under more advantageous circumstances in France than in any other country in Europe, for he has in fact been the creature of a system which, whatever may be urged against it, has reconstituted the rural economy of the nation and more than doubled the produce of the soil. His mode of life presents a striking contrast and instruction illustrative of the system, for it is based upon the proceeds of the land in which he has a direct personal interest, and he lives, therefore, as an independent member of society according to his means in the social scale. . . .

"The condition of the small proprietors varies very much in different Departments, as also does the mode of cultivation; but they will generally be found in easy circumstances and living always in the hope of bettering themselves; and it is this hope which absolute possession engenders that

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stimulates them to fresh exertions, beneficial not only to themselves but to the community in general."

This testimony in favour of the effects of a widely distributed ownership of land is not to be displaced by shewing that the average produce of wheat in France is considerably below that of England. It has already been shown by statistics that France is not a country wholly of small owners; nearly half her cultivated area is farmed by tenants; and there are 154,000 farmers who cultivate upwards of 100 acres as compared with 92,000 tenants of the same size in the United Kingdom. The wheat crops in France are mainly produced by the tenant farmers on these larger farms. The small owners as a rule do not produce wheat. The low average production of wheat in France is due to the soil and climate of her middle and southern provinces. In the north, the average production is as high as in England. No argument therefore can be drawn from this difference as against small ownerships.

Even Monsieur de Lavergne, who fully appreciates the system of large farms, and who is not in favour of an universal system of small proprietors, says on this point, "Is it right to extol the large property system to the disparagement of others, as has been done—to wish to extend it everywhere and to proscribe the small? Evidently not; for viewing the question merely from an agricultural

point of view, the only one now under consideration, general results argue more in favour of small properties than of large." Results of Changes of Land Laws.

The same testimony meets us from almost every part of Europe. Of Baden, where landed property is very much divided, Mr. Bailie reports to the Foreign Office.

"The prevalent public opinion is that the system of small freeholds tends to promote the greater economical and moral prosperity of the people, to raise the average standard of education, and to increase the national standard of defence and taxation. It seems to be a generally established fact that the small farmers realize larger returns than the larger farmers do from the same number of acres, and the result is that the large properties and large farms are disappearing, and being parcelled out among a number of small farmers. In fact, the price of landed properties is determined less by their intrinsic value than by the possibility of selling or letting them in small holdings."

He adds that, "the small peasant proprietors do not differ from the larger proprietors in respect of dwellings, clothing, mode of living, or education. There is no doubt that since the revolution of 1848 there has been a great improvement in the houses of the peasants and their mode of living, and in the cultivation of the soil; and their present condition must on the whole be regarded as favourable in respect of their means and general well-being."

Results of Changes of Land Laws.

Of Hesse Mr. Morier says: "An able-bodied pauper is a being altogether unknown. I even found a difficulty in describing the sort of person respecting whom I endeavoured to obtain information.

"The most vivid impression which I carried away from Viernheim was the equable manner in which the wealth of the place appeared to be distributed amongst its inhabitants. The whole population seemed to be on the same level of material comfort and well-being. I could not bring back to my recollection any sight or sound denoting the presence of a squalid class, or any indication pointing to a higher or a ruling class.

"When it has once reached a certain level of well-being, a peasant proprietary is a good judge of what amount of population the land will bear, and just as it increases in wealth and comfort, and in the special knowledge of the capabilities of the soil, so it becomes alive to the danger of jeopardizing this prosperity by over-population."

He speaks of spontaneous and systematic emigration as the safety-valve. "The use of this regulation is best understood in the Rhine provinces, which is one of the best cultivated and most prosperous districts in Europe. The Palatinate peasant cultivates his land more with the passion of an artist than in the plodding spirit of a mere bread-winner."

Of Lombardy, we are told that "Public opinion holds that small proprietors are advantageous to

ur mountain soils, where the spur of ownership is required to compel production. From a social point of view the possession of freeholds may always be considered a benefit to the peasantry, and when *la petite culture* is possible it is favourable to agriculture."

Results of Changes of Land Laws.

There is no official report from Switzerland, but of the condition of the agricultural population we have abundant evidence from numerous writers who have studied that country, and who all unite in bearing testimony to the wonderful improvements which have been made of late years, to the marvellous industry and thrift of the small proprietors, and to the general diffusion of wealth, of comfort, and of intelligence. The Rev. Barham Zincke, who has written a most excellent account of this country, the result of many successive visits to it, says of the Canton de Vaud, "I saw no mansions in Switzerland, neither did I see scarcely any houses that with us would pass for cottages. What I did see was a surprising number of good comfortable small houses, which showed that the district was inhabited by a large number of well-to-do families . . . . It must be obvious that the yearly produce of these little reclaimed grass farms, in which every little patch and corner is made to support as many blades of grass as the most careful cultivation can force into existence, would not maintain in their present style of living all the families that reside in these comfortable houses.

Results of Changes of Land Laws.

But the Swiss system suggests and encourages the practice of saving; and in most of these houses a capital fund has been accumulated, which so aids what these small farmers get during a year from their farms that their families are enabled to live with what is to them ease and comfort."

"It is an incidental and not unimportant result of this system that it works in the direction of enabling the population to provide themselves with better houses than under the territorial system they could rent from speculative builders of rows of cottages run up by contract on land let for the purpose on a ninety-nine years' lease. The comfortable little houses on the small farms throughout this district are the property of those who are living in them. That was the reason why they spent as much as they could spare in constructing them well, and in making them roomy and, in accordance with their ideas and wants, commodious."

"We may infer from the general condition of the Swiss that it is the possession of land, or the prospect of being able to acquire it, that saves a labouring class from sinking into a mob of pauperized drudges, and educates them into men."

How great is the difference between the state of the Swiss as regards their houses and the agricultural labourers of England as regards their cottages will hereafter appear; the difference between their occupiers is scarcely less.

Results of Changes of Land Laws.

It is not, however, necessary to go beyond the immediate possessions of the Crown of England for a conspicuous illustration of the results of a widely distributed ownership of land upon the production, the industry, the content, and the general well-being of a whole community. There is such a case close at hand in the Channel Islands. The people of those islands, since their union with England 800 years ago, have jealously preserved their local government and their distinctive laws. Chief among these distinctions are their land laws, which they have inherited from the common law of Normandy; these laws favour the dispersion of property, and forbid its accumulation by entail or primogeniture. The result is, that with an area no larger than hundreds of private estates in England and Ireland, the islands boast of not less than 4,000 landowners, cultivating in most cases their own property, and constituting a class of small yeomen.

The industrial results of these small yeomen are most remarkable; the island is cultivated to the highest point which it is capable of; the gross produce is extraordinary; there is a general diffusion of wealth; thrift and saving are conspicuous in every class; cottages such as we see in England and Ireland are unknown; the people are better housed than in any part of Europe; pauperism is almost unkown; everything testifies to the stimulus effected by the wide distribution of property, and

Results of Changes of Land Laws.

by the fact that property is brought within the prospect of acquisition by every one.

The most enlightened people in the island, equally with public opinion, attribute these results to their distinctive land laws; to the fact that they have successfully resisted the introduction of English laws, which they believe would have an opposite tendency; and they significantly allege that if these laws had been introduced some centuries ago, the islands, by this time, would probably have been each owned by a single individual; and their cultivators might have been in the condition of the Irish tenants. As it is, a more prosperous, loyal, and contented class does not exist under the Crown of England than the small yeomen of the Channel Islands.

CHANGES OF LAW IN THE UNITED STATES.

Changes of Law in the United States.

Our colonies have dealt not less rudely with the principles of English land laws. The various States of North America retained them for many years, so long as they remained colonies, but after separation from the mother-country, commenced to amend them. By their new constitution the subject of the land laws was left to the discretion of the State legislatures. It is strong testimony to the strength of public opinion against these laws, and also to the result of the change, that every

State has in succession abolished primogeniture and has so restricted the power of settlement that what we call entail is impossible. They have universally, however, retained the freedom of willing. They have rejected the French system of compulsory division of property. They have preserved the parental authority intact. The universal custom, however, of testators is to distribute property on death equally among their children. Any preference not justified by exceptional circumstances is most rare, is condemned by public opinion, and where attempted not unfrequently leads to the will being disputed and upset on the ground of undue influence. Land transfer is exceedingly simple and uncostly; mortgages, which are almost a necessity for the existence of small properties, are effected with the greatest ease and at a most trifling cost, and the whole process of dealing with land is assimilated to that of personal property. Any legislation which tends to the monopoly of land or to reduce or curtail the free rights and dominions of its owners has everywhere been repudiated.

Changes of Law in the United States.

Under this system, and under the influence of public opinion, there is no tendency to create landed estates on the English principle, and the country throughout its length and breadth is farmed by men owning their own land. Hence the multitude of owners of land. The relation of landlord and tenant of farming land is all but

Changes of Law in the United States.

unknown. The general aspect of the country, especially in such states as New York, Pennsylvania, Maryland, and New England would surprise those who have not been out of England. The rural districts have a more populous appearance than even in this country. Every hundred to a hundred and fifty acres belong to a separate owner, who has a substantial house, and who farms the land himself. There are no large owners. The three millions of landowners are the foundation of the social system, are the cause of stability, are the conservative element in a system otherwise profoundly democratic, and are also the promoters of prosperity to the numerous cities and towns. The same condition of things is extending through the far West, hundreds of miles beyond Chicago, and will eventually, and at no distant day, stretch across the continent.

In a similar manner have our other Anglo-Saxon colonies cast off the old shell of our land-laws, as soon as they were endowed with the power to legislate. They seem to have found them an intolerable nuisance, wholly unsuited to modern life, and to the necessities of an industrial society, of which freedom of commerce in land is the very life breath. These changes have universally taken the same direction ; the withdrawal of state sanction to accumulation or to the preference of one child over another; the assimilation of the law with respect to all kinds of property; the limitation of

family settlements, and the prohibition of a family succession different from that of the state; the registration of titles; the simplification of transfer. Changes of Law in the United States.

CHANGES FAVOUR INDIVIDUALISM.

It is to be observed that these changes, alike in the old world and in the new, have been in the same direction and with the same object—to favour and strengthen individual property in land and to promote its distribution. There is not in any of the legislation alluded to the slightest trace of communism, or of any new-fangled ideas of property in land. No attempt has been made towards state appropriation of land. No step has been taken to secure to the community what is called the unearned increment. The individual owner is everywhere invested with full, absolute, and undisputed control of the land which he owns. Freedom of contract is nowhere interfered with. Changes Favour Individualism.

Mr. West says of France, "Proprietary rights can never be called in question. Whether a property consists of one acre or one hundred, the owner is absolute in all matters relating to possession. The legislature cannot interfere between him and the tenant on questions respecting compensation for improvements or indemnities. Tenant right and fixity of tenure are phrases scarely ever heard of in France."

Changes Favour Individualism.

Monsieur de Lavelaye says of Flanders,[1] "The Flemish tenant, though ground down by the constant rise of rents, lives among his equals, peasants like himself, who have tenants whom they can use just as the large landowner does his. His father, his brother, perhaps the man himself, possesses something like an acre of land, which he lets at as high a rent as he can get. In the public-house, peasant proprietors will boast of the high rents they get for their lands, just as they might boast of having sold their pigs or potatoes very dear. . . .

"Thus the distribution of a number of small properties among the peasantry forms a kind of rampart and safeguard for the holders of large estates; and the peasant property may without exaggeration be called the lightning-conductor that averts from society dangers which might otherwise lead to catastrophes."

Let it not then be said that any legislation in the same direction, has any the slightest taint either of communism or confiscation. The one great object in view is not to destroy property, or to lessen its value and the sense of security which it gives, but to extend its influence as one of the strongest and best agents in promoting individual exertion, and as a spur to efforts to rise in the social scale, which is equally powerful with the

[1] See *System of Land Tenure*, published by the Cobden Club.

lowest as with the highest. It proceeds then on the principle of individualism as opposed to any principle of socialism or communism.

Changes Favour Individualism.

If then a right view has been taken of the motives which have led to all the changes already described in other countries, and of the results attained, equally in the old world as in the new, it must be difficult to suppose that England can withdraw herself from the stream of modern life, can hope to live in an atmosphere of her own, resist all changes in her laws, and content herself with going onward in the old groove, and under the pleasing assurance of philosophers that land was intended as a luxury for the rich, and that no poor man need hope for a permanent interest in the soil of his country, other than perhaps so much as is covered by his hearth-stone when alive, and his grave-stone when dead.

To those who argue that it is an inevitable law of nature that land should in a wealthy country become the luxury only of the rich, and that the existing state of things in England is due to this and not to our positive laws, two questions may fairly be put with reference to the condition of other countries. The one is, whether they would really desire to substitute the English system of complete separation between the three classes of landowners, farmers, and labourers, for the yeoman and peasant proprietorship which so extensively prevails elsewhere? whether they would

Changes Favour Individualism.

contemplate with pleasure the possibility, or whether they expect, that the three million farming owners of the United States, with the advancing wealth and population of that country, will gradually be merged in about one-twentieth of their number of landlords, and that the relation of landlord and tenant should be universally substituted there?—whether in France it would be better, or be desirable in any sense, that the five millions of peasant owners should be reduced to the position of tenants at will to about one-hundredth part of their number of landlords, and that the Irish system should prevail there and in the Channel Islands as well as in Ireland?

The other question is what, on the assumption that these changes are desirable and to be aimed at, should be the first steps taken with a view to this end, and with the object of facilitating and promoting the gradual accumulation of land in few hands, and the substitution of a class of large landowners, with farming tenants for the existing systems of widely distributed landownerships?

Would not the first measures, adopted with this object, be that their legislatures should again give the sanction of law to primogeniture, should again give facilities for the entail of landed property, and should again revert to a system of land laws which would make the title to land obscure and complicated, and its transfer therefore costly and difficult? And if this be conceded, how can it be doubted

that these same laws and difficulties have in this country been mainly instrumental in producing the result which we now observe ? Changes Favour Individualism.

ORIGIN OF THE ENGLISH LAND SYSTEM.

In England, as in most parts of the Continent, there existed, prior to the feudal system, a very different state of things to that since brought about. In Saxon times England was undoubtedly a country of very numerous landowners: they consisted of "eorls," or larger owners, who held under the Crown, and "ceorls," a very numerous class, tilling the land they owned, and answering to the modern class of yeomen, "the root," as Hallam says, "of a noble plant, the free-soccage tenants, or English yeomanry, whose independence stamped with peculiar features both our constitution and our national character." These two classes owned the cultivated land; beyond were the common lands and forests, then called "folk land," the land of the people, the property of which was vested in the village community, and where the villagers had the right to turn out their cattle, dig their turf, or cut firewood. The property laws of these people were not different from those now prevailing among our colonists. There was equal division of land upon death among the children; the power of alienation and of willing was fully conceded; there was a public register of all deeds Origin of the English Land System.

Origin of the English Land System.

affecting land; alienation was simple and public. These distinctive features of the Anglo-Saxon land laws were swept away after the Conquest. In their place was introduced the feudal system of land tenure, with its web of relations between the sovereign, the nobles, the knights, the villeins, and the serfs. The greater part of the land of England was confiscated after the battle of Hastings, and was granted out by the Conqueror to his military chiefs. These chiefs or lords again, on their part, granted portions of the lordships thus confided to them to their principal knights and retainers below them, to be held on the condition of military service.

Some of the Saxon landowners survived this process of confiscation, and were brought under the system as free tenants of feudal superiors subject only to military service. Much greater numbers were relegated to the position of villeins in the feudal system, a position under which they continued to cultivate their lands for their own use, but subject to dues and services, mostly of a personal or agricultural character, to their lords, and were considered to have no rights as against such superiors. Below these was the class of serfs, or slaves, without any rights of property, the mere menial servants of their lords and masters. The feudal system being of military origin, founded on conquest and maintained against internal difficulties and foreign foes by force, had necessitated the

maintenance of military commands, or fiefs, in strong hands; the principle of primogeniture, therefore, by which the fief was inherited by the eldest male descendant was also a necessity; and equally opposed to the system was the power of alienation, without the consent at least of the superior lord. Origin of the English Land System.

The general state of England, then, shortly after the Conquest, was this. The country was divided into a great number of separate lordships or manors. The lord of each manor cultivated a portion of the land, entitled his demesne, by himself or by his bailiff, partly by the assistance of the villeins or small farmers of his manor, who were bound to render him service—some of so many days' labour, and others of so many days of team work—and partly by the labour of serfs or slaves. The common lands, or wastes, were appropriated in a sense by the lords, but subject to the rights of the freehold and other tenants of the manor to turn out their cattle or dig their turf there.

Other portions of the land within the manor were owned by free tenants, who owed only military service, or in many cases fixed rents, to their superior lord, and who in every other sense were independent owners of their holdings. The remaining lands of the manor were held and cultivated by the class of villeins. Many of them had originally been owners of their lands, but by commendation

Origin of the English Land System.

and tenant, such as we now know it, did not exist. There is little trace of land having been let on lease to farmers before the reign of Edward I. The principle of primogeniture did not in these early times apply to any property but fiefs, or lands held under fiefs by military service; it did not apply to that freehold property known as free-soccage land, which had escaped confiscation at the Conquest, nor did it apply to the property of villeins. It is clear, then, that between the date of *Domesday* and the time of Edward III. there must have been a great increase in the number of persons who had an absolute right in the soil of their native country. Certain it is, that Sir John Fortescue, writing in the time of Henry VI., about a hundred years later, speaks of the number of its freeholders being one of the chief boasts of England of his day. He adds, that although there were some noblemen of great estates, yet that between these estates there were great numbers of small freeholders. The number of parish churches, the entries in old registries, and many other indications, point to the fact of England being, before the Black Death, very thickly populated in its rural districts. And Professor Rogers, who has investigated many old records and manorial lists of the fourteenth century, has found that the land was greatly subdivided, and that most of the regular farm-servants of that time were owners of land.

It would be interesting to trace, through

succeeding periods, the gradual reduction of this element of English life. Statistics are at no period to be obtained, so that anything like an accurate tracing of the decline is impossible. Origin of the English Land System.

It is worthy of notice, however, that, unlike most other countries in Europe, where the principle of primogeniture was confined to feudal fiefs and lordships of manors or to the property of the nobility, and was not applied to the property of inferior classes, in England this principle came to be applied to every species of landed property and to all classes of landowners, however small. It was probably extended to copyhold property about the time of Henry III.

THE HISTORY OF ENTAIL.

It is however to the principle of entail that we must mainly ascribe the reduction and disappearance of small owners. This principle was by no means one of the earliest features of feudalism. Fiefs and lordships of manors being in the first instance connected with military duties, even the hereditary principle was not at first recognised, and was for a time resisted by the feudal superiors; but when fully recognised every effort was made to secure the perpetuation of these functions and properties in the male line of the family. The Norman barons endeavoured to introduce this principle shortly after the Conquest, but they met with great resistance from the Crown and the Church. History of Entail.

History of Entail.

The main object which the feudal chiefs had in view was to secure their fiefs and property to their successors free from the chance of forfeiture in case of treasonable acts of their own. Conviction for treason was followed by forfeiture of property. Entail would preserve the property for the family, though the present holder might suffer forfeiture during his lifetime.

On the other hand, the Sovereign, representing the principle of order and of imperial interests, as opposed to those of the feudal lords or petty local chiefs, was much concerned in maintaining the principle of forfeiture of property in case of treason, as one of the main securities against rebellion. Any reduction therefore of this penalty was to be resisted. A powerful ally in this instance was found in the Church. The principle of entail if once admitted would deprive the Church of the main source of its wealth, the gifts of land by its pious sons. The clerical lawyers therefore assisted the sovereign in his efforts to prevent the introduction of this principle, and we find that they borrowed principles from the Civil Law with great ingenuity to upset the grants which had been obtained by the nobles with the object of creating entails.

For the first 200 years after the Conquest, the nobles failed to secure their object, or to effect entails. During the whole of this time therefore land was practically alienable; and no doubt this

contributed greatly to the increase in the number of owners of land. History of Entail.

In the year 1285, however, the nobles found themselves strong enough to force upon the Crown and the country a law, which overrode the interpretation which had been given by the lawyers to the words of entail, and practically enabled perpetual entails to be created. It is worthy of notice that this statute of Edward I. known as 'De Donis,' an Act still on the statute book and part of the law of this country, never obtained the consent of the Commons. This vicious principle of perpetual entail speedily came into common use, and it was not long before grave inconvenience and mischief arose from it, and from the consequent withdrawal of a great part of the landed property of the country from free commerce. The celebrated Lord Coke speaking of the statute 'De Donis,' said of it—

"The true policy of the common law was overturned by this statute, which established a perpetuity, by art for all those who had or would have it; by force, whereof all the possessions in England were entailed accordingly, which was the occasion and cause of divers other mischiefs; and the same was attempted to be remedied at divers Parliaments, and divers bills were exhibited accordingly, but they where always on one pretence or other rejected. But the truth was that the Lords and Commons, knowing that their estates in tail were not to be forfeited for felony or treason, as their estates of inheritance

History of Entail.

were before the said Act, and finding that they were not answerable for the debts and incumbrances of their ancestors, and that the sales or alienations and leases of their ancestors did not bind them, they always rejected such bills."

The bad effects of this statute are also described by Blackstone in a well-known passage :—

"Children grew disobedient when they knew they could not be set aside; farmers were ousted of the leases made by tenants in tail; creditors were defrauded of their debts; innumerable latent clauses were produced to deprive purchasers of land they had bought and paid for, and treasons were encouraged as estates tail were not liable to forfeiture longer than for the tenant's life."

These evils continued without remedy for another period of 200 years. After this long interval the reviving power of the Crown and the ingenuity of the lawyers combined to upset these perpetual entails, and a method was discovered by which the celebrated statute of Edward I. was circumvented and defeated. The process by which this was arrived at, and carried out, was so subtle, technical, and ingenious, that it would be impossible to explain it in popular language, or to make it intelligible to others than lawyers and logicians. It is sufficient to say, that by a kind of collusion between the courts of law and the immediate holder of an entailed property, the object of the entail could be defeated, and landed property subject to it could be sold.

Later the Tudor kings, Henry VII. and Henry VIII., succeeded in inducing Parliament to give legislative sanction to this curious device of the lawyers, and also to deprive entailed estates of their freedom from forfeiture in the case of the treason of their holders. These acts again gave great freedom to the sale of land, and though entails were not wholly destroyed and were still valid for certain purposes, they were not effective to prevent the alienation of land. Thenceforward for another 200 years land again became freely alienable, and entails were practically rendered innocuous. History of Entail.

It may be not unworthy of notice that these 200 years, when land was practically free from the shackles of entail, when the holders of estates were really their owners, and not merely the ostensible owners or temporary enjoyers of them, were not the least memorable years of English history or the least fruitful of great Englishmen. They embraced the Elizabethan era, and they spanned the lives of Bacon, Shakespeare, and Milton; of Sydney, Raleigh, and Blake; of Cecil and Walsingham, of Hampden and Pim, of Cromwell and Vane, of Strafford and Falkland. It does not appear that, even in those days, notwithstanding the absence of effective entail, men had any fear of being unable to hand down to a remote posterity the products of their fortunes in lands and houses. Burleigh, Hatfield, Longleat, Audley End, Holland House, and Bramshill, and

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numerous other great mansions, were built in this period, and still survive as evidence that even in days when landowners were in full possession of their property, they did not fear to build for a long future.

Frequently during this interval attempts were made by clever lawyers to restore the principle of indefeasible entail; the courts of law, however, uniformly resisted such attempts; in a well-known case which came before them, and which was known as the "Perpetuities case," it was attempted to create an entail or settlement upon an unborn person, not dissimilar to our present family settlements, by giving a life-interest to a father and vesting the property in his unborn eldest son; the Judges however rejected the scheme, alleging that if this were permitted the following evils would arise:

1. That the owner of the property would be prevented providing for his widow and younger children in such proportion as he should think fit.

2. That the eldest son being certain of his inheritance, and therefore independent of his father, would not be subject to parental control.

3. That such settlements would lead to complexity of title, and therefore to uncertainty and expense of transfer.

It is most important to recollect these objections of the Judges to the introduction of the first germs of a system which afterwards unhappily was

established, and which, as will be shown, has led to the very evils which were thus foretold. History of Entail.

The period of freedom of land from entails lasted from the date of the discovery of the means of eluding the Statute de Donis, in 1472, till about the time of the great Rebellion, another period of nearly 200 years; it might possibly have lasted till our own time, but for the accidental effects of that great political crisis upon the views of lawyers and landowners. It again became a great object to the owners of land to protect their properties from the possible results of their acts if convicted of treason; and at a time when almost every landowner was forced, either by inclination or public opinion, to take one side or the other in the great national struggle, there was almost equal danger of the enforcement of this forfeiture for treason, on either side, as now one party and now the other prevailed.

It is interesting to observe that the lawyers and Judges who had previously favoured freedom of alienation, and had exercised all their ingenuity to prevent entails, or to find the means of eluding and breaking them, now shifted their advocacy, and lending their subtleties to the opposite principle, aided the landowners in protecting their family estates from forfeiture, and succeeded in forging the system of entail through family settlements, from which the country has ever since suffered.

A royalist lawyer, of great learning and in-

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genuity, Sir Orlando Bridgeman, the ancestor of the Earls of Bradford, was the first to devise a plan, by which landed property could be settled upon an unborn eldest son, in such a way, as to elude both the statute law against entails, and the common law doctrine against perpetuities, and to lay the foundation for the family entails such as we now have them. It is said that Sir Orlando, whose reputation as a lawyer was so great that he became "the oracle of both parties, his very enemies not thinking their estates secure without his advice," himself assisted in giving currency to his own coinage, when he was raised to the Bench of Judges after the Restoration; in other words, he upheld, by decisions from the Bench the devices he had invented as a lawyer. However this may be, it is certain, that about this period there was invented by the lawyers and accepted by the judges as valid, a system of entailing property on unborn persons, wholly alien to the principle which had induced Parliament 200 years before to break the system of entails, and utterly opposed to the doctrine of freedom and alienability of land which had been the happy condition of the country during that period.

The essence of the new principle thus introduced was the settling of property upon an unborn person, against which the courts of law had previously struggled. The effect of thus permitting the vesting of property in the unborn was to

convert the immediate possessors of properties hampered by these arrangements into mere life-holders, without any real power over the property, without power to sell, or even to lease for any period beyond their own lives, and without any power of bequest in favour of other children than the one named in the settlement. It had the great merit however, at such a period, of preventing the forfeiture of more than the life estate in the event of the life-holder being convicted of treason. History of Entail.

It would be difficult, if not impossible, to make intelligible to other than lawyers how this was effected, and how the old traditions and doctrines of the law were evaded, or to describe all the subtleties and difficulties which have since grown out of it. It is sufficient to say that it led directly to the system known as that of family entail under which landed properties are now generally held. It will be observed that this system has never received the assent of Parliament. It has never fairly been brought under review of the legislature. It was the invention of lawyers, and was sanctioned by the courts of law, but has never been subjected to popular control.

MODERN ENTAILS.

The general object of such family entails may be briefly stated as follows:—to secure that the landed property which is the subject of them Modern Entails.

Modern Entails.

shall descend in the direct male line by the order of primogeniture, intact and undiminished, for as long a period as possible; to prevent the holder, the tenant for life, and successive tenants for life, from alienating the property, or bequeathing it to their children in such proportion as they may think fit.

It is customary for lawyers, in representing this system, to speak of it as very limited in its operation, and as tying up estates for a comparatively short period. They say that once in every generation it is possible to break the entail, and for the persons interested to join in freeing the property, and selling or disposing of it as they think fit. It is true that when the tenant in tail, as he is called, the unborn son in whom the property is ultimately vested, after the death of his father and perhaps his grandfather, reaches the age of twenty-one, he and his father can agree together to break up the entail, and to cut off all other contingent interests or collateral claims.

In fact, however, the system is so curiously and artfully devised, that when this climax is reached, when after the lapse of years there are co-existing two or more persons in different generations, who by agreeing together can cut off the entail, there arises out of the very nature of the arrangement the greatest inducement to all concerned in such a family settlement to take this opportunity, not to free the estate from its

cumbrous shackles, but to prolong the entail, and to make a new settlement which will carry on the entail to another unborn generation. Modern Entails.

The process has thus been described by an eminent legal writer:

"Upon the majority or marriage of the son who is tenant in tail under a family settlement the estate is commonly re-settled, he receiving an immediate provision, and by his estate being reduced to a life-estate with remainder to his issue in tail, parting with his prospective powers of alienation. By such a process as is here roughly described, the bulk of family estates in this country are kept in settlement from one generation to another, the new fetter being added at that epoch at which the power of alienation arises."

And the late Lord St. Leonards, a powerful advocate of the system, spoke of it as "from its own nature leading to successive settlements." Although, therefore, in one sense, such settlements may appear to be limited in duration, the truer view is that they embody all the vicious principles of perpetual entail. They are intended to preserve the family property intact through successive generations, and to prevent the head of the family, at any time, from either reducing the corpus of the property, or from exercising any option in favour of a more equal distribution among his children; and subject to some perils, which will shortly be pointed out, they certainly succeed in doing this.

Modern Entails.

It has been already shown that from the time of the Norman conquest till the present time there have been four nearly equal periods of 200 years each. In the first 200 years entails could not be effected. In the next 200 years they were permitted by law, and their evils were notorious, and admitted to be most disastrous. In the third period the system was again broken down, entails were practically inoperative, landowners were again masters of their own property, and land was again brought into free commerce. In the last period entails have again been permitted, through the medium of family settlements which, if not perpetual as they were in the former period, have tended to perpetuities, as Lord St. Leonards has told us.

This power and the consequent custom to entail land has now existed for rather more than 200 years. It is commonly admitted that about three-fourths of the landed property of the country is subject to such entails. What effect have they had upon the distribution and ownership of property? Have they been the cause of the accumulation of land in few hands? Do they tend to prevent the application of capital to the land? Have they been in the interest of the families concerned? How have they affected the position and well-being of the labouring class?

EFFECT OF ENTAILS ON NUMBER OF LAND-OWNERS.

Effect of Entails on number of Land-owners.

It would be most interesting to trace the number of landowners through these periods, and to show the effect of these various changes upon the distribution of land. Unfortunately, however, from the *Domesday Book* till the return of four years ago we have no certain facts and no reliable statistics whatever. It has been already shown that at a very early period there was a very large number of small proprietors. It is probable that in the time of the Edwards their number was very much greater than at the present time, notwithstanding that the area of cultivated land has been greatly increased in the interval by the inclosure of commons and the clearing of forests. There is every reason to believe that a large majority of farmers were yeomen, that is, were owners of the land they farmed; and that a very large number of the labouring class were also owners of cottages and small plots of land. The records of copyhold manors give abundant proof of this; and all the testimony of early writers is to the same effect. How far this number was reduced or affected by the prevalence of entails between 1285 and 1470 we cannot tell, nor whether the greater freedom of the next period either tended to increase their

Effect of Entails on number of Land-owners.

number or to stem the reduction which had been taking place. It is certain, however, that in the time of the civil war the number of freeholders in rural districts was considerable. It is matter of history that 6,000 freeholders rode up from Buckinghamshire to Westminster to petition Parliament against the arbitrary acts of Charles I., from which Clarendon dates the commencement of the civil war. It was from the yeomen that Cromwell mainly drew his forces. It was the county freeholders that formed the main support of the parliamentary party.

Lord Macaulay, speaking of the yeomen class of 200 years ago, says that they were "an eminently manly and true-hearted race. These small proprietors who cultivated their own fields, and enjoyed a modest competence, without affecting to have escutcheons or crests, or aspiring to sit on the bench of justice, then formed a much more important part of the nation than at present. If we may trust the best statistical writers of that age, not less than 160,000 proprietors, who with their families made up more than a seventh of the whole population, derived their subsistence from small freehold estates. . . . . It was computed that the number of persons who occupied their own land was far greater than of those who farmed the land for others. Great," he adds, "has since been the change in the rural life of England."

There are also in most parts of rural England

indications that in times not very remote the small squires and yeomen were much more numerous than at the present time. Great numbers of existing farmhouses have the appearance and tradition of having been the residences of owners and not of tenants. It is admitted that the yeomen class has all but disappeared from most parts of England, and that the labouring class has almost ceased to have any permanent interest in or connection with the soil of their native land. The number of squires has been also so reduced, that in large districts there are very few resident gentlemen, except the clergy. Inquiry on this point has shown that in the counties of Berkshire and Dorsetshire more than half the parishes have no gentlemen of the landowning class resident within them. Of the county of Nottingham it was reported that of 245 parishes in the eastern division only sixty-five have resident squires; and it was added, "the bankruptcy of one duke and the eccentricity of another have caused great depression in this part of the county." Everything, therefore, points to the reduction of the number of landowners of all classes, whether of the squire class, or of the yeomen class, or of the agricultural labourer.

Effect of Entails on number of Landowners.

A careful examination of the list of landowners will tend to the same conclusions. Of the 955 landowners of upwards of 10,000 acres each, and averaging 30,000 acres, about sixty appear to have

Effect of Entails on number of Land-owners.

come into this category during the last thirty years; some few of their owners have bought out other large proprietors, but the greater part of them have been created by the extinction of many small proprietors; and probably an examination of the list of proprietors in the next rank would show a somewhat similar result. Of those who have existed more than thirty years a certain number have from one cause or other been compelled to sell portions of their properties, yet a greater number have increased their properties, either by marriage or by purchase; and the general result of an examination of the list must be the conviction that the number of large proprietors is steadily increasing at the expense of the smaller proprietors, and that the average holdings of land by these large owners is also increasing. It may be worthy of notice, that in the list of those who have risen into the first grade of landowners within the last thirty years by purchase, and not by marriage, there is not a single name distinguished for any great service to the State or to the public. The days when statesmen, like the Cecils or Walpoles, or when great lawyers like the Howards, the Cokes, or the Bridgemans, or great generals such as the Marlboroughs and Wellingtons, could acquire great properties of land and could found families in the first rank of landowners, seems to be past. The list consists almost wholly of successful merchants, manufacturers, brewers, coalowners,

ironmasters, or tradesmen; it is from these classes that families are now being founded, which it is hoped by means of entails to maintain for a long future among the landed magnates. Without wishing to depreciate the merits of such persons, or the services which they have rendered to the industry and commerce of the country while building up their own fortunes, it may be permitted to express a doubt whether society is much interested in affording them the machinery for securing that their names shall be escorted by landed property in perpetuity.

Effects of Entails on number of Land-owners.

It will not be denied, however, that if of this class a certain number are continually pressing into the ranks of landowners, and if an equivalent number is not dropping off the list by the dispersion or division of the property, by will or by sale, the list of large owners must be continually increasing, and the number of small owners continually diminishing in greater proportion; and the time must come when the ideal of such a system will be reached, when the country will be divided among a comparatively few of the largest owners, and when small proprietors will have ceased to exist in rural districts or beyond the immediate neighbourhood of large towns.

DANGERS OF ENTAIL.

Dangers of Entail.

But for one feature of entail by family settlements there cannot be a doubt that accumulation would be far greater than it has been. The one counteracting force is that they sometimes tend to defeat their own objects. The effect of the arrangement is to divest the present holder of the property of all real power over it, and to vest the remainder with full power in the eldest son when he shall attain the age of twenty-one and survive his father. If the son should not agree to re-settle the estate, as it is called, when he arrives at the age of twenty-one, or if the father should die before the son reaches this age, the property will ultimately vest in the son to do as he likes with it. The certainty of thus coming into possession of the estate leads not a few eldest sons into early extravagance; they not unfrequently fall a prey to the class of money-lenders who are always on the look-out for them, and who induce them to anticipate their inheritance by borrowing upon their expectations. A young man who begins in this way is speedily brought to the point when he has ruined his property even before he has come into possession of it, and many are the cases where family properties have been sacrificed and sold through anticipations of this kind, favoured, if not created,

by the very arrangements which were intended to preserve them intact. The settlor of the property who thought to preserve the family estate for future generations of his family, and who deprived his son of the full dominion over it and of the power of free bequest, is defeated in his object, through having vested the remainder in an unborn grandson, of whom he could know nothing, and who turns out to be unworthy of the charge. Dangers of Entail.

Another feature of such family arrangements and artificial attempts to maintain property in the family, in successive generations of eldest sons, is the gradually accumulating debt upon the estate. Although the estate is settled on the eldest males in succession, there must be some provision for other members of the family. Widows must be provided with annuities, younger sons and daughters cannot be left without means, portions for them must be charged on the property, in many cases debts must be met by charges on the estate, generally by arrangement between father and son when the property is re-settled; the result is that charges gradually accumulate, and it is well recognised that few except the very largest properties will bear the burthens of this nature for two or three successive generations, unless marriage of the heir brings accession of wealth, or unless the property improves greatly in value from some adventitious circumstance; and it may be doubted whether in the long run more families are not ruined and

Dangers of Entail.

brought down by such arrangements than are perpetuated and enriched by them.

The effect of these accumulating charges upon the condition of the property itself will shortly be alluded to; meanwhile it must be pointed out that the family settlement involves evils of no small magnitude to the family itself. It deprives the parent of the greater part of his parental control over his eldest son; the son is placed in a position independent of his father, almost superior to him, for nothing can be done to the estate without the son's consent; however unworthy he may prove to be, the property must descend to him; the father has no power of selection or veto; and no doubt many a father has had reason to curse the family arrangement under which his property is settled upon one who is unworthy to succeed him.

There are other causes at work which tend to a constant reduction in the number of small owners, and which add to the inducement to persons to enrol themselves in the list of great landowners, and retard their retirement from the rank by sale or otherwise. They are, however, closely allied to that which has been already pointed out, and it is difficult to determine whether they are not effects rather than causes of the system. Chief among them is the great political power which has been, for the last 200 years, conceded to the owners of landed property. One branch of the legislature has been wholly created from their ranks. A large

landed property is admittedly the necessary qualification for a peerage; this rank is almost conceded to an owner of over 20,000 acres. The English county representation in the House of Commons is also wholly at the command of the landowners. They rarely look beyond their own ranks or beyond their own county for a representative. The owner of a certain standard number of acres, if of the right side of politics, is almost certain of representing his county. This command over the county representation is mainly secured through the tenant farmers. It is also the passport not only to honours of all kinds, but to political office, and to state patronage. The local government of the rural districts is wholly in the hands of the landowners; the county magistracy is their recognised appanage. The sports of country life are such as almost to necessitate large properties, and could not be so fully indulged in if there were many small proprietors. Dangers of Entail.

The sense of power created by the possession of a large estate in a rural district is also great, and is generally opposed to the existence of small ownerships within its range. Opportunities, therefore, are seldom neglected of buying up smaller properties where they are likely to interfere with this power.

In the neighbourhood of large towns, where land has attained a building value, these forces are counteracted by the personal interest of the owners, tempted by high prices; special facilities have been given to the owners of settled estates

Dangers of Entail.

to avail themselves of this great demand for building land. But in rural districts there is no such counteracting influence.

While then, on the one hand, all these forces promote the creation and increase of large properties, on the other hand the difficulties of title in our most complicated system of land laws, and the consequent expense of transfer, and the cost of our system of mortgage, tell with infinitely greater effect upon small properties than on large, and act as a great discouragement to their purchase or continued existence. This is what Lord Hatherley said on this subject in 1859 :—

"Look how the limitations of your law affect the transfer of land. It is only on account of these that you have difficulties in title; because, if it were not for the complexity of limitations, a system of registration would long since have been established, which so far as fraud and rapidity of transfer was concerned would have freed us from any difficulty of title whatever. You have now the combined effect of fraud and the complicated investigations of title which operate in the most serious manner to prevent the free transfer of land in our community; what I wish for, and have long wished for, is a free transfer of land."

All other experience tends to show that a cheap and simple system of registration of title and mortgages is an essential condition of the existence of small properties.

On the one hand, therefore, we have every encouragement given by law, and by political and social arrangements, to the concentration of land in few hands; and on the other, every discouragement given to its purchase, and to dealing with it in small quantities, and by small people. What wonder then that we should find the number of proprietors continually diminishing, and that England presents an exception so striking to the rest of the civilised world. Dangers of Entail.

RESULTS OF THE SYSTEM IN IRELAND.

The most serious effects of the system thus described have been exhibited in Ireland; and it is well to pass them under review, although the case of Ireland is very different from that of England and far more serious. Results of the System in Ireland.

It has already been shown that the number of landowners in Ireland is proportionably far less than in England. The difference is even more striking than that already pointed out if we compare the number of small proprietors in the rural districts of both countries.

The three agricultural counties, Bedfordshire, Berkshire, and Buckinghamshire, with an area of 1,173,000 acres, may be fairly compared with the Irish counties Meath, Westmeath, and Cavan, with an area of 1,360,000 acres. In the English counties there are 6,412 owners of between 1 and

Results of the System in Ireland.

50 acres. In the Irish counties with a larger area there are only 612 such owners.

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The difference between the two countries is the more remarkable as, whatever may be the case in England, it is certain that in Ireland land has not acquired an artificial value. The price of land in Ireland is very much below that of England; it does not average more than twenty-two years' purchase of the annual rental, and has only reached even this point within the last few years. At this rate money may be invested in land in Ireland to pay about 4½ per cent.

The explanation of this great difference in the number of landowners in Ireland, is to be found in the early history of that country, in the fact that it never passed through the feudal system, that it was not thoroughly conquered by England until the feudal system had already disappeared from the latter. Under the feudal system, the occupiers of land in Ireland, who held under ancient customs which gave them an interest in

the soil from which they could not be dispossessed, would most probably have obtained the same recognition and fixity of tenure as did the villeins or copyholders in England. The later English law treated them on the Conquest as mere tenants at will of those who acquired by grant the land of the dispossessed lords of the soil. Results of the System in Ireland.

In later years the position was still further aggravated by the penal laws directed against the Roman Catholics which forbade their inheriting or acquiring land by purchase. When, added to these, we have the English land system tending to the aggregation of land, and offering every obstacle to its dispersion or easy transfer, we can well account for the paucity of landowners in Ireland; and for the fact that even when compared with England their number is so very limited.

None of the justifications which are claimed for the system of England apply to Ireland. The same laws and the same system has achieved results in the two countries as different as possible. England is in the main a country of large landowners and of large farm holdings. Ireland is a country, proportionally of even larger landowners, but of very small farm holdings. Of its 533,000 farm tenancies, 450,000 are of less than 50 acres, and 50,000 between 50 acres and 100 acres. It is, therefore, essentially a country of peasant cultivators. In England the custom is for the landowner to effect all the substantial improvements on

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the farm; to build the farm-houses and other buildings, to drain and fence the land. In Ireland the landlord as a general rule does none of these. It is the tenant who lays out what little capital is spent in this way, even to the building of the house. He does this under a tenancy which is rarely more than a yearly holding.

The condition of Ireland is still more remarkable, when we consider that all experience from the Continent shows that farming on a small scale can only answer when largely combined with ownership; that it is the magic of ownership only which gives the inducement to the industry necessary for very small farms. Being a country of small farms, it is free from the argument that large properties are necessary in order that farming may be carried out on a large scale. It is equally free from the argument that large properties are economically advantageous, as they result in capital being invested in the land by the owner, and in tenants being able to use the whole of their capital in farming. Here then, of all places in the world, one would expect to find a large class of small owners. Apart from the recent sales under the Irish Church Act, there are none. There are all the conditions of a peasant proprietary, without any proprietary rights, or any fixity of tenure. The condition of Ireland before the famine of 1848 closely resembled the condition of France as described by Arthur Young, immediately

before the Revolution of 1789. On the one hand, a pauperised tenant class; and on the other great properties encumbered to a degree which made the owners mere ciphers in the hands of their creditors. This state of things was brought to a crisis by the potato famine. The consequent emigration relieved Ireland of its plethora of cottier tenants. The effort made by the imperial legislature was first directed to freeing property from its encumbrances; and the Encumbered Estates Court was brought into existence for the purpose of cutting the knots of these tangled interests in landed estates, and enabling them to be sold. It was believed and hoped that the land, thus freed from its bankrupt owners, would pass into the hands of capitalists, who would improve its condition by expending capital in buildings, drainage, &c. It is reckoned that one-fifth of the landed property of Ireland has passed through this Court, has changed hands, and the number of owners of such land has probably been increased threefold. Those however who devised this measure reckoned without taking into consideration Irish feelings and Irish customs. With rare exceptions, the new owners spent no more capital on the land than did their easy-going predecessors. When they attempted to improve, the tenants often resented the process. It was an assertion of complete ownership which did not tally with the ideas of Irish tenants, of their relations to their landlords. Whatever the English law

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might be, the traditions, customs, and ideas of Irish tenants involved a relation to their landlords far different from that which holds in England; they claimed a participation in the proprietary rights, which was in fact conceded to them by custom, and which prevented the lords of the soil from ejecting them without good cause, arbitrarily raising rents, or appropriating, in the shape of increased rent, the value of the tenants' improvements. The new purchasers entered upon their properties without any of these traditional feelings, without any sympathy for their tenants, without any knowledge of local customs, or hereditary practices. They too frequently applied to their new purchases the most extreme doctrines of proprietorship; they thought they were entitled to raise rents to the highest rack-rental that could be extracted, regardless of the previous history of the estate, or of the customs of the country.

It cannot be denied that many cases of great hardship and injustice arose to Irish tenants. What was intended for their benefit resulted not unfrequently in their ruin.

The result therefore of the Encumbered Estates Act was to intensify the demand for the recognition of tenant right, and to give a great impulse to political agitation in favour of fixity of tenure. England at last turned an ear to Irish grievances, and the Land Act of 1870 was framed, on the principle of applying to the Irish land question so much of Irish

ideas as was not wholly incompatible with English doctrines.

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It gave legal recognition for the first time to local customs such as the Ulster Tenant Right, which had created a practical property in the tenant. It reversed the doctrine of English law, that improvements of all kinds are annexed absolutely to the land, and in default of actual agreement enure wholly to the benefit of the landlord. It recognised the fact that in the case of tenants of small farms there could be such a thing as an arbitrary and capricious ejectment, and it gave to the tenant, who was ejected, a claim for any improvements effected, and damages for capricious ejectment. It did not, however, go the length of interfering between landlord and tenant as to the amount of rent. It left to the landlord the power of raising the rent to a point, when the rent would practically swallow up the value of the tenant's improvements, but it left to the tenant the option of refusing this rent, of throwing up his farm, and of making his claim for the value of his improvements and for disturbance of the tenancy, to which he would be entitled.

It is unnecessary to pursue further the question of tenant right or the relations of Irish landlords and tenants; it is, however, important to notice the impulse given by the state to the extension of proprietorship in substitution for tenancy, and to the creation of a class of peasant

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proprietors, where none such existed previously. The framers of the Irish Land Act, and of the Church Disestablishment Act, under the influence and impulse mainly of Mr. Bright, recognised the grave deficiency of proprietary rights in Ireland, and the expediency of endeavouring to increase the number of proprietors, and of converting where possible, by agreement or purchase, tenants into owners. This might indeed be deemed an alternative process to that of fixity of tenure demanded by the tenants. It was, at all events, though novel in its application as a remedy, in harmony with the ideas of English law and English proprietors. However unwilling Parliament might be to adopt any such plan in England, Ireland, it thought, might be an exception without raising any precedent dangerous to the principle of property.

The proposals in this direction met with no opposition in either branch of the Legislature. It is also worthy of notice that the first attempt to extend proprietary rights followed the example of France and Prussia. It was the secularisation of Church property which gave the opportunity for first experimenting in this direction. It was probably felt that to sell the landed property of the Irish Church in the open market was to risk its falling into the hands of persons who would capriciously and arbitrarily raise rents; and it was thought not only fair to offer such land in the first instance to its tenants, but that the result of

increasing the number of proprietors would be a gain to the cause of property in Ireland. The Irish Church Act, therefore, directed the Commissioners charged with the sale of Church lands to give preference to the tenants, and to charge the land sold to them with the repayment of three-fourths of the purchase-money by instalments spread over thirty-two years. Results of the System in Ireland.

The intentions of Parliament were admirably carried out by the Irish Church Commissioners. They have earned the gratitude of the Irish people by pointing the road where it is possible much further progress may hereafter be made. They might have obstructed the policy of Parliament, or they might have neglected to make it known to the tenants. They have, on the contrary, used their endeavours to make the policy of Parliament intelligible and acceptable to the tenants.

Under this operation nearly 5,000 tenants of the Church property, of the smallest class, have found one-fourth of the purchase-money for their farms, and have become absolute owners in lieu of tenants; for thirty-two years they will be responsible for annual instalments of the principal and interest of the remainder of the purchase-money, which are about equivalent to their former rent. It is in evidence that these new purchasers have paid their interest with regularity and without fail, and that many of them have already been induced to effect great improvements on

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their holdings, the result of the feeling of security created by absolute ownership in place of yearly tenancy.

The Irish Land Act contained provisions known as "the Bright Clauses" in the same direction, and with the same object, that of creating a proprietary class among the peasant farmers of Ireland. Under these clauses the State undertakes to lend two-thirds of the purchase-money of any farm sold to a tenant, repayable, as in the case of the Church property, by instalments spread over a term of years. The Landed Estates Court (the successor of the Encumbered Estates Court), is directed by the Act to afford facilities to tenants to purchase their holdings, when estates are sold in that Court, and various other provisions are contained with the same object. Hitherto, however, but little result has followed. In the eight years which have elapsed since the passing of the Act, not more than 100 sales have been effected to tenants in each year under its provisions,—a result which, whether compared with the results of the Irish Church Act, or with the intention and wishes of the Legislature, is certainly most inadequate.

The attention of Parliament has recently been directed to the failure of the Act of 1871. A Committee was appointed in the session of 1877, to inquire into the working of the Bright clauses, and to report whether any further facilities should be given to promote the purchase of their holdings by

the occupying tenants of Ireland. After taking evidence of numerous witnesses, the Committee reported in the session of 1878. Its members unanimously agreed to the expression of opinion that there is a great desire on the part of the occupying tenants to become owners by purchase, on sale of properties in Ireland, and that it is most desirable that further facilities should be accorded by the State with this object. There were differences in the Committee as to the mode in which this object should be carried out, but there was none as to the principle. In the past session (1879) a resolution was proposed in the House of Commons, and was carried without opposition and with the consent of the Government, to the effect that "in view of the expediency of a considerable increase in the number of owners of land in Ireland among the class of persons cultivating its soil, legislation should be adopted for the purpose of increasing the facilities offered by the State with this object, and of securing to the tenants the opportunity of purchase on the sale of property consistently with the interests of the owners thereof." A stronger resolution condemning the condition of landownership in Ireland, or more emphatically declaring the duty of the State to adopt effective measures for remedying this condition, could not easily be framed. It is certain therefore that the Government must speedily propose to Parliament some measure with this object.

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The evidence given before the Committee on this

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to the highest ideal, cannot be doubted. Many, indeed, pinch themselves in other expenditure in order to perform their duty; and few there are who would not do it if they could.

If all estates were maintained up to this ideal, there would be little to say against the system from the economic point of view; though even then there might be something to allege in favour of more distributed ownership, and more independence of individuals, especially of the labourers, than is consistent with such an ideal system.

The whole system, however, depends upon the owner of the property being able to provide the capital for permanent improvements, such as buildings, drainage, and labourers' cottages. If this capital be not forthcoming the system breaks down at its central point, on which the economic success of the whole system hinges. If the landlord cannot provide the necessary capital for these permanent improvements, no one else will do so. The farming tenant cannot be expected to do so upon any length of lease which is ordinarily given to him, and still less can the labourer be expected to build or improve his cottage.

It has already been shown that it is of the essence of such family arrangements known as settlements and entails that they lead to encumbrances. The land goes to the eldest son, perhaps free from charge in the first instance; the

personalty is divided among the other members of the family. In the next generation, however, the land must be charged for the benefit of other members of the family.

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It is also well recognised that the owner of a landed estate cannot do full justice to it, unless he is able to draw upon other property for its improvement. Sir Robert Peel used to say that every landowner ought to have at least as much property in consols or other securities, if he wished to do his best by the land. The meaning of this is, that there is a constant drain upon the landlord for fresh outlay for improvements or for the maintenance of previous improvements, if the machine is to be well worked.

What, however, is the condition in this respect of the average landowner? How many of them have other means in this proportion to their land? How many are unencumbered as regards their family estates? How many of them are able to do their duty by the land?

It is certain that the greater number of them are utterly unable to perform their duties. They are the ostensible and temporary owners of family estates, for the most part already heavily charged with debts, or with charges for other members of the family, and wholly unable to expend further sums in draining and improving, still less in building cottages, which at best give but a poor return on the outlay.

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Most of them are in this false position, that as tenants for life only of their property they cannot expend capital on their estates without subjecting the money thus spent to the same entail as the estates themselves. The limited owners thus have the alternative before them either of neglecting their properties, or of spending money upon them which they would otherwise intend for their younger children, to the ultimate benefit of their eldest sons, who are already entitled to the estates. If such persons were absolute owners of their property, and without other means of improvement, they would probably be induced to sell outlying parts of the property, and invest the proceeds in draining and improving the main portion of the estate. They would gain in income by doing so. The investment in land, we are told, produces an average of only two per cent.; the produce of a sale if spent on drainage would entitle the owner to raise his rents so as to pay five per cent. or more on the outlay. But he is tenant for life only, and he can only sell with the consent of trustees and reversioners, to re-invest in other land, or to pay off mortgages.

Is it possible to conceive a system better calculated to prevent capital finding its way to the land? That it has this result can scarcely be doubted. This is what Mr. Caird said a few years ago on the subject in his *Agricultural Survey of England*:—"Much of the land of England, a far

greater proportion of it than is generally believed, is in the possession of tenants for life, so heavily burthened with settlement encumbrances that they have not the means of improving the land which they are obliged to hold. It would be a waste of time to dilate on the public and private disadvantages thus occasioned, for they are acknowledged by all who have studied the subject."

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A Committee of the House of Lords in 1873 upon the improvement of land, reported, that what had already been accomplished in the way of drainage and other improvements was "only a fraction of what still remained to be done."

Mr. Bailey Denton stated before this Committee, as the result of his calculations, that out of 20,000,000 acres of land requiring drainage in England and Ireland, only 3,000,000 had as yet been drained. Mr. Caird, before the same Committee, speaking not only of drainage, but of all kinds of improvements, estimated that only one-fifth of what required to be done was accomplished.

The improvements thus spoken of are of a remunerative kind; improvements such as drainage and farm-buildings are generally paid for by an increase of rent fully compensating for the outlay. Unfortunately, however, the building of labourers' cottages by landlords is a most unremunerative expenditure. It seldom returns more than two per cent. on the outlay, very often less. If, therefore, we find the outlay of capital for

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remunerative improvements very much in arrear, it is only too certain that it will be far worse in the case of cottages.

The Report of the Royal Commission of 1869, as to the condition of women and children employed in agriculture, contains the most full information on this subject. The evidence was collected by Assistant Commissioners who visited every part of the rural districts of England, and who are unanimous in their testimony.

Mr. Fraser, now Bishop of Manchester, who visited Norfolk, Essex, Gloucestershire, and Sussex, describes the cottages in one district as "miserable;" in a second as "deplorable;" in a third as "detestable;" in a fourth as "a disgrace to a Christian community." He says that "even where adequate in quality, they are inadequate in quantity; and some rich landowner, 'lord of all he surveys,' having exercised his lordship by evicting so much of his population as were an eyesore, or were likely to become a burthen to him—still employing their labour, but holding himself irresponsible for their domicile—has, by a most imperfect system of compensation, built a limited number of ornamental roomy cottages, which he fills with his own immediate dependents. Out of the 300 parishes which I visited I can only remember two where the cottage accommodation appeared to be both admirable in quality and sufficient in quantity. The majority of the cottages that exist in

rural parishes are deficient in almost every requisite that should constitute a home for a Christian family in a civilised community. It is impossible," he adds, "to exaggerate the ill-effects of such a state of things in every respect—physical, social, economical, moral, intellectual. Physically a ruinous ill-drained cottage, 'cribbed, cabin'd, confined,' and overcrowded, generates any amount of disease —fevers of every type, catarrh, rheumatism—as well as intensifies to the utmost that tendency to scrofula and phthisis, which, from their frequent intermarriages and their low diet, abounds so largely among the poor. Economically, the imperfect distribution of cottages deprives the farmer of a large proportion of his effective labour power; when he gets his man, he gets him more or less enfeebled by the distance he has to travel to his work. The moral consequences are fearful to contemplate. Modesty must be an unknown virtue, decency an imaginable thing, where in one small chamber two, and sometimes three, generations are herded promiscuously, and where the whole atmosphere is sensual, and human nature is degraded into something below the level of the swine. It is a hideous picture, and the picture is drawn from the life."

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As to the deficiency of cottages, he mentions the parish of Spixworth, where "there are only three cottages to 1,200 acres, there might well be twenty-five; at Waterdon only two cottages to

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750 acres, fifteen would be no excessive supply; at Markshall only five to 830 acres, at the usual Essex rate there should be 25. At Buckenham Tofts there are only two resident labourers on 650 acres; at Didlington no more on 1,850 acres. At Sedgeford the Ecclesiastical Commissioners have an estate of 2,000 acres without a single cottage, and in this parish we hear of ten and eleven persons sleeping in a single room. At Titchwell, Magdalene College, Oxford, the chief owner and lord of the manor, has not a single cottage. At White Colne, in Essex, the chief landowner has not one either." "Instances," he adds, "of this kind could be accumulated *ad infinitum.*"

The Bishop recognised that a great deal had been done of late years, especially by the largest landowners. Unfortunately, however, the remedy did not rest with the wealthiest landowners. Many cottages belonged to proprietors too indigent to have any money to spare for their improvement; some to absentee and embarrassed landowners; some to mortgagees. Mr. Portman, another Assistant Commissioner, who reported upon Cambridgeshire and Yorkshire, says, "The opinion appeared to be universal that the bad state of the cottages and the overcrowding of the sleeping-rooms is the root of the demoralization of both sexes." He states that "one of the principal causes is 'absenteeism,' under which I include not merely non-residence of the owner in the county where his estate is situated,

but that which is equally bad, viz., non-attention to the outlying portions of that estate. On many occasions when, being struck by the poor state of the dwellings, I have inquired who is the owner, I have been told he is some one living perhaps in the county, but rarely, if ever, visiting the village or taking any heed as to the condition of the people." Of one very large property he reports, "The tenements are wretched; although the rents paid are small, the whole repairs have to be done by the cottagers, and so the rents become in fact very high; and as one of them told me, 'The landlord does not care if they all tumble down.' On other portions of this estate there was a great want of cottages, many having been pulled down and scarcely a new one built." Of another parish in Wales he says, "No Irish property can present more wretched consequences of absenteeism than this. The only consideration the parish receives from the owners of property is the regular collection of rents." The statement of Mr. Portman as to absenteeism is important as confirming what has been already stated as to the number of parishes without resident landowners. Results of the System in England.

Mr. Edward Stanhope, now Under-Secretary of the India Office, reports also as to the general bad state of cottages, though making many exceptions, especially in Lincolnshire, the county where it may be observed small peasant owners most abound. Of Leicestershire he says, "The cottages must be

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described as generally bad." He adds, "There is a strong feeling in Lincolnshire that Government should give assistance in providing cottages for the labouring class, and especially on entailed estates."

Mr. Culley, another of the Assistant Commissioners, says, "There constantly arises to me, and, I doubt, not, to my colleagues, the feeling that in speaking of that state of the cottages, I am exhibiting a dark picture, as if it was the fault of a class, many of whom are powerless to change it, and few of whom are answerable for it."

"What has led to the state of the labourers' dwellings being such as to justify me in speaking of it as a national disgrace? And why are so many landowners now powerless to deal with it? If I were to answer these questions, judging from the history of the estates I have visited, I would answer at once—the encouragement given by law to the creation of limited interests in land, and the power of entailing burthened estates. What can the poor life-tenant, especially if his estates be burthened, do towards providing good cottages for his labourers? Nine times out of ten he strives to do his duty, and suffers fully as much as the ill-housed labourers on his estates. The unhappy propensity to create limited interests, and entailed and burthened estates, tells hardest against the small properties, while if the owner lives as all the world expects him to live, there is no margin left for estate improvement,

especially cottage improvement. Even the large estates, by the time all is done for which farm tenants most loudly call, unless burthens be light or the owner unusually self-denying, there is very little left to expend in the expensive luxury of cottage building. The case of small estates, however, is the worst, and in spite of the supposed protection of the law of entail, they are being swallowed up by their larger neighbours, or passing into the hands of men whose sole means are not invested in land." Results of the System in England.

Mr. Portman says upon the same subject, "I would venture to suggest, for your consideration, whether it is not expedient that legislation should take place in such a direction, as to bring into the market those tracts of encumbered land, enabling those who have capital to acquire such lands if they desire to do so, and conferring a boon on those who now possess them by giving them money to spend on such an amount of territory as they wish to concentrate round their homes, while at the time the curse of poverty and misery will be removed from these districts whence all the profit is drawn and to which none returns. Bad cottages would, I think, then become more rare; a portion at least of the profits would be spent on the spot, a more contented race of farmers and of labourers would be found, and the education of the people, now flagging for want of funds, would progress. Some may say that this question of the dwellings of the

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poor in agricultural districts is a passing question of the hour, and that it is not really so great an evil as is represented. I would answer, Go into the country and see for yourself. Use your common sense, and call to mind the effect of absenteeism on Ireland; and say whether or not in those portions of England where poverty and misery arising from the same cause meet you at every step, there is not urgent reason for dealing with the evils now existing by some legislative enactment, which shall put an end to a state of apathy and indifference in many holders of encumbered estates, and open the doors for the spending of capital on lands by those who are able, in the place of those who are now unable, to do so."

It is only fair to add, that it is not only upon entailed properties that cottages are bad. Some of the worst cases are to be found on land which has been bought by speculators, and whole rows of cottages have been built of the most flimsy material with insufficient accommodation, without gardens, and which are let at exorbitant rents. Most of these cases have arisen in what are called open parishes, adjoining those close parishes where, before the alteration of the law which threw the burthen of the support of the poor upon the whole Union, it was the interest of landowners to neglect to provide cottages, or to pull down existing cottages, in order to avoid giving to the labourers a claim for settlement, which would throw the cost

of maintaining them, when paupers, upon such parishes. Results of the System in England.

The Census of 1861 showed that in the previous ten years, in 821 English parishes, a decrease of houses was accompanied by an increase of population. The last census shows that this action has been stayed by the Union Chargeability Act, but there was nothing in the Act to undo the mischief which had already been effected.

Other bad cases are not rare, where cottages have been built upon patches of land cribbed from the waste of a manor, or roadside waste, and which the labouring occupiers claim as their own; these, however, are hardly fair cases of individual ownership.

Let it not also be said that all landowners are to blame for this state of things. Nothing could be more unfair. If they were absolute owners of their property, with power to sell or to charge their properties as they might wish, there would indeed be ground for complaint if such a state of things were allowed to remain unredressed. But the system under which the great bulk of them hold their properties as mere nominal owners without real power over them, is devised with the certain result that it can never be their interest to expend money on cottages, and rarely in their power to do so.

Many efforts have been made by Parliament to find a remedy for these evils, short of interfering

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with entails or simplifying the transfer of land. The tenant for life (the limited owner, as he is very significantly called) had originally no power to bind his successor, either by leases or by charges on the property for its improvement. Parliament, however, has interfered to give him these powers, subject to the approval of public bodies, who are to have regard to the interests of the reversioner.

Short leases for agricultural purposes can now be given by tenants for life. Longer leases can be given with the consent of the Court of Chancery. Charges can be made on the entailed property for certain improvements with the consent of the Inclosure Commissioners. The charge, however, must be made in such a way as to repay the principal by instalments in varying terms of years according to the nature of the improvement. The result is that drainage generally involves an annual charge of 7½ per cent. on the outlay, as much or more than the tenant will pay in the shape of increased rent. The building of cottages involves an annual charge which averages three times the amount of the rent which can usually be obtained for them. Sales may also be effected upon applications to the courts of law, where there are no powers for this purpose contained in the settlement; but the consent of tenants for life and of reversioners must be obtained; the proceeds must be expended in paying off mortgages or in buying other land to be settled in the same manner, and can never be

expended in agricultural improvements, however necessary. These, however, are mere palliatives, and not remedies. They have failed to effect any substantial result. They tend to substitute for the real owner of the property a Government department, a State inspector, or a judicial tribunal; they entail troublesome and expensive applications to courts of law and Government officials; they involve friction and delay. From their very nature they are destined to failure. The system, however, which needs such remedies stands condemned by their proposal, and, as the late Mr. Wren Hoskyns well said, "Wherever a series of supplementary devices is needed to meet a law at variance with the time, it indicates the undercurrent of another law struggling against worn-out barriers that will not long withstand it."

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What is this other law, struggling against the worn-out system, which has thus signally failed to meet the demands of the country and the claims of the land for the outlay of capital? It is freedom of sale, the alienability of land, the free commerce of land; the principle that land shall be owned by those who can give full title for it, and who can either borrow for improvements or sell what they cannot improve; the principle that land shall belong to the present generation and not to an unborn generation; that landowners shall be full masters of their own property, and not be obliged to obtain the consent of the unborn for improve-

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ments or sale, through the medium of courts of law and Government offices.

It must be here freely admitted, that some of the largest properties are exceptions to this general condemnation, both in respect of farm improvements, farm buildings, and labourers' cottages. Such properties as those of the Dukes of Bedford, Devonshire, and Northumberland, and others that could be named, are models of all that conscientious and intelligent landowners should aim at. It is obvious that as there is a limit to the possible personal expenditure of families with such great fortunes, the margin which is left for improvement of their properties must be greater in proportion than on smaller estates; it will generally be found also that these very great landed properties are supported by great incomes from other sources, such as house property or minerals. It is often argued from such examples, that the larger properties are, the better prospect there is of capital being expended on the land by their owners; and hence a conclusion that it is well to encourage the creation of large properties and to regard with indifference the disappearance of smaller properties. The argument, however, is a dangerous one; the logical conclusion of it is, that it might be well to merge all large proprietors into one still greater proprietor, namely, the State itself. If the State were sole and supreme landlord, it might spend all the rent in local improvements, in farm buildings

and cottages; and in such a case the whole of the rent would remain on the land from which it is due. This is obviously a *reductio ad absurdum*, but it suggests to us the necessity for bearing in mind the principle on which alone private property in land exists and can be defended. Results of the System in England.

If the English system fails in bringing to the land the capital which is so essential for its development, or for building cottages so necessary for the accommodation, comfort, and even decency of the labourer, what is its effect upon the labouring class? The failure to spend capital on the land to them means low wages; low wages and bad cottages combined means a poverty-stricken life, which tells upon the whole existence of the labourers.

It may be confidently said that the agricultural labourers are divorced from any permanent interest, however small, in the land, or even in the villages in which they live. With rare exceptions, it is impossible for them to become possessed of a plot of land or even of a cottage. The sense of property therefore never comes home to them.

Can we wonder, then, at the thriftless, hopeless, and aimless condition into which so large a proportion of them have drifted? The effect of the English system upon them may be best judged by the results in those counties in the south where it has been longest in existence, where it is carried out most fully, and where it is undisturbed by the growth of any adjoining industries; such counties

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as Sussex and Dorsetshire. Who can be satisfied with the condition of the agricultural labourers in these districts? or who can suggest any remedy consistent with the ideal of the present system? What hope for advancement is there in their own country? what prospect of rising from the lowest steps of the ladder to the higher? An impassable barrier separates the labourer from the farming class immediately above him, and a still wider gulf from the owner of land who crowns the social edifice. What wonder, then, that the labourers should be thriftless and without energy; that education only induces the best of them to leave the country districts for other employments, and that by a process of natural selection the average of those who remain is being gradually deteriorated?

This condition is not the result of a harsh Poor Law, nor of the want of charity. The Poor Law is in most agricultural districts administered with benevolence, and probably there is no other country where local endowments for the distribution of doles and charities, and where private charities, are so numerous and liberal. It is, however, confidently stated that in those parishes where charity is most frequent, where there are most endowments for the distribution of doles, where the clergy and squires, actuated by the best intentions, are most active in private charities, there the condition of the labourer is the most

depressed, and the least satisfactory; and there also is least thrift, and least energy for self-help and independence; in too many of such parishes excessive charity has succeeded in undermining the self-help, thrift, and independence of the labourers, and has encouraged wastefulness and intemperance. Results of the System in England.

What then appears to be most needed in the agricultural districts of England is an element of independence, which can only be attained by the sense of property; and of all the means of giving this sense of property and this feeling of independence, the ownership of land, even though limited in extent, and the ownership of a house and home, with its garden, would be the most powerful and effective.

In what has been thus said, it is by no means intended to convey the expectation, promise, or even the hope, that England, under an altered system of law, will become a country of yeoman farmers or of peasant proprietors. In the main, and for such a period as any legislator can prospectively look forward to, it would be impossible to realize either of these subjects. England will certainly continue to be, as it has been in the past, a country in which there will be many large properties. Even if all landowners should have secured to them the full power to dispose of their property as they think fit among their children, it may be confidently expected that the great bulk of them will continue to leave the main portion to

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their eldest sons; and it will be long before any custom of a different kind grows up in a country so essentially conservative. What we may look forward to is, a considerable increase in the number of landed proprietors of all classes, and especially of small owners. Without aiming at a system of ownership such as we see in France, and other countries organized on the same plan, it is not beyond reason to expect that some nearer approach may be made to the system which prevails in Germany, where, as already explained, although there are many large proprietors, there are also many small owners, where there is a large class of yeomen farmers, and where a very large proportion of the agricultural labourers are also owners of small holdings, varying from half an acre to five or six acres. Of the effect of this distributed ownership and this interest in the soil upon the labouring class generally, there cannot be doubt to any one who reads the reports from the countries where this prevails.

It is not too much to say that if landowners, who are unable to do justice to their properties, were empowered to sell, and should avail themselves of this power, in respect only of a small portion of their properties, a very great change might soon be effected in the state of landownership in England and Ireland, and the landowners themselves would be the first to benefit.

GENERAL CONCLUSIONS.

General Conclusions.

If then the arguments already adduced have any weight in them, the conclusions from them and the objects to be aimed at will not be doubtful.

These are, that the distribution of ownership of land is such that it is held in amounts far beyond the average means of its holders to perform their duties according to the ideal of the English system, in the outlay of capital on it and the building of cottages; and that the most is not being made of the land as an incentive to individual exertion and as the most powerful agent for the promotion of individual industry and thrift.

It has also been shown, from experience drawn from every part of the world, equally from Europe as from countries of Anglo-Saxon descent, that land is not necessarily the luxury only of the rich, and that if it should be placed within the reach of other classes, and the means be given of dealing with it in a simple and expeditious manner, it will become the luxury of a much wider class, and indeed of all classes proportionate to their means. The same experience has also been gathered from recent experiments in Ireland. It has been shown that while in every part of the civilized world efforts have been made successfully to free land from the obstructions and impediments of an obsolete feudal system, to withdraw the sanction

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of Law to its accumulation in few hands, and to place it, as far as is consistent with the rights of property, within the reach of all classes, and to promote its ownership by the many rather than the few, in this country little or nothing has been done in this direction; all the influence of the State and of society has been in favour of the concentration of land in few hands, our laws of tenure sanction and assist this, the system of transfer fosters it. It has been shown that as a result we have a state of landownership such as is almost unique in the civilized world.

The objects to be aimed at by any legislation are not novel or destructive; they are not opposed to the rights of property, but in support of them; they savour not of communism or socialism, but are on the lines of individualism; they seek to make the best of individual property, for all its functions, and in all its actions on the social system; they are such as other countries have pursued with success; they claim that the State has some control over its own destinies, some voice in the disposition of its area, and that society is not necessarily the sport of an economic law favouring only accumulation, which, however we may disapprove it, we are powerless to resist. The objects then to aim at, are a wider distribution of landed property, to the extent that it shall in the main be held by those who have the means of performing their duties, and that it shall be brought within the

reach of all classes of the community according to their means. General Conclusions.

The means by which these objects may be attained may be summed up under the following heads :—

1. The withdrawal of the State sanction to the accumulation of land by the law of primogeniture.

2. The limitation of family settlements to the extent of prohibiting entails in the manner invented by Sir Orlando Bridgeman, by which property can be settled upon unborn persons, and a family law of primogeniture secured.

3. The requirement that there shall be for every property some person or persons who shall have full power of dealing with the property by sale or otherwise.

4. The assimilation of the law relating to land and other property, and the simplification of the law relating to land tenure, so that its transfer may become simple and inexpensive.

5. The withdrawal of all State influence and sanction in favour of accumulation of land, and the exercise of it in future in favour of a numerous proprietary of land, consistently with the full recognition of existing rights.

It can easily be shown that these measures hang together; and that the pivot of them all is the abolition of primogeniture.

(1.) By the abolition of primogeniture is meant the removal of the State sanction to an arrange-

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ment by which, in the absence of a will, property in land descends to the eldest son of the intestate to the exclusion of the other children, a law which seldom operates without producing injustice. It is not contemplated that the property shall be compulsorily divided among the children against the will of the parent. The freedom of willing would be retained and preserved; and any interference with it would, it is believed, be alien to the feelings of the great majority of Englishmen. It is only possible in France and other countries because, as already shown, the custom of equal division of property is so universal and so entwined in the feelings of the people, that it is scarcely possible for them to conceive an unequal distribution, and because public opinion considers that a parent who does not provide for all his children according to his means is neglectful of his parental duty. Where such is the public opinion compulsory division by law is possible; but that is very far from being the opinion of Englishmen in the existing social conditions of England, where historical and family traditions so largely affect the opinions and habits, not only of the wealthy, but of all classes, that it would be absurd to expect either that a custom of equal distribution would speedily grow up, or that a law compelling it would be acceptable. An historic family has to be maintained, an ancient residence in and about which the traditions of a family have centred has to be

preserved, the political institution of the peerage has to be regarded; these and many other causes will long sustain and probably justify the custom of making a difference in favour of eldest sons in many families; though possibly not to the extent which is now often the case. General Conclusions.

(2.) When it shall be determined that the law itself will not sanction or invite inequality, it will follow almost as a matter of course, that it must be forbidden to individuals to make a family law of succession different from that of the State. Freedom of willing will be permitted, and every person will be allowed to make what distinction he thinks right among his children or relatives, but he will not be permitted to transmit these distinctions to another unborn generation. If freedom of willing is conceded to him, he must not in his turn deprive the next generation of the same privilege. The freedom of willing is a part of the paternal authority, and no parent should be deprived of this power by an antecedent generation.

(3.) The last principle being decided on, the next one becomes easy of accomplishment. The distinction in favour of an unborn person being cut off and prohibited, it follows that the present generation must have more power over the property, and the power of sale is one of the first and most important attributes of property.

(4.) The two last principles are indispensable to the next, that of simplifying the transfer of land.

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The main difficulty in the transfer of land arises out of the complications due to the law of settlement or entail; so long as these exist, and so long as ownership may be divided between the present and the future, between the living and the unborn, it is impossible to expect or to hope for simplicity of title. Even the late Lord St. Leonards has said that "no young State ought ever to be entangled in the complication of our law of real property."

Why then, it may be asked, should any old State maintain and preserve these entanglements? They are retained only because they are necessary for our present system of family settlements. It will be easy enough to get rid of these difficulties if we come to the conclusion that these entails are injurious equally to those who are the objects of them, and to the community.

(5.) But not less important than all these is it that the general influence of the State shall no longer be used in the direction of the accumulation of land. It is unnecessary to suggest the subjects where an opposite influence might be used, and where it will be possible for a very different policy to be pursued by Parliament than has hitherto been done.

The action taken under the Bright clauses in Ireland has already shown how it is possible with the unanimous consent of all parties to make a most important move in the direction of giving

active assistance for the conversion of tenancies into ownerships. This particular method may not be applicable to England; but an altered public opinion on the subject may justify other measures; and it need hardly be pointed out that the land held in mortmain in England and Wales amounts to 1,300,000 acres, of which no less than 500,000 belong to charities. General Conclusions.

As a preliminary, however, to any action, it is necessary that public opinion should pronounce itself strongly on the broad question, whether it is satisfied with the present condition of landownership in this country. Public opinion may even without a change of law produce considerable effect. It may induce not a few of those who have hitherto considered that the interests of a rural district are best concerned where all the land in a parish or district is concentrated in one hand, to change their opinion, and to hold that as a matter of safety to the owners of property generally, as well as in the interest of all classes around them, it will be wise to favour the multiplication of landowners, and to give facilities for the creation of small owners of all classes rather than continually to reduce them. Such public opinion can, however, only be formed by a full and free discussion of the subject.

Does the land of this country produce what may reasonably be expected of it by a proper outlay of capital and labour on it? Does it act to its full extent as a stimulus to industry, thrift, and

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prudence? Is it a stable and satisfactory state of society where land is, or is considered to be, only the luxury of the rich? Is it not expedient that land should be brought within the reach of all classes, even at the risk of losing something of its value as an article of luxury?

It has been attempted to answer these questions by arguments and illustrations drawn from the history and experience of this and other countries. It is believed that the result of all this experience is that a country is happiest, and its economical, social, and political condition most sound, where there is a numerous and varied proprietary of its land, and where no class is divorced from the soil. This state of things, it is believed, will and can only result where the trade in land is free; that is, where the transfer of land is simple and uncostly, where all dealings in it are reduced to their simplest form, where each successive generation has full and unrestricted dominion over it, where the State gives no sanction or facilities to an accumulation of land for successive generations, and where the laws give equal facility for its dispersion as for its acquisition. Under such conditions, when artificial stimulus is removed, free competition will have its full effect, and will on the one hand prevent the undue subdivision of land, and on the other its too great aggregation.

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